

# Memorandum of Understanding for supervisory cooperation between the Malta Financial Services Authority and the Bank of England and the Financial Conduct Authority

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This Memorandum of Understanding is made BETWEEN:

The Malta Financial Services Authority, (herein after the 'MFSA'), situated at Mdina Road, Zone 1, Central Business District, CBD 1010, Birkirkara, Malta.

AND

The Bank of England (including in its capacity as the Prudential Regulation Authority (hereinafter the 'PRA')), with the Bank's headquarters at Threadneedle Street, London EC2R 8AH, United Kingdom and its PRA functions largely carried on from the Bank's premises at 20 Moorgate, London EC2R 6DA, United Kingdom, (hereinafter the 'BoE'),

AND

The Financial Conduct Authority, with its headquarters at 12 Endeavour Square, London E20 1JN, United Kingdom, (hereinafter the 'FCA') and, together with the BoE, the 'UK Authorities' and each of them, a 'UK Authority'.

(And hereinafter jointly 'the Authorities' and each of them, individually, 'an Authority'.)

## Definitions

For the purpose of this Memorandum of Understanding:

- **'AML/CFT supervision'** means, if relevant for an Authority, the approach of an Authority to effectively monitor, and taking the measures necessary to ensuring compliance with, supervised entities' anti-money laundering / counter-terrorist financing obligations;
- **'applicable legal framework'** means any law, regulation or requirement applicable to the MFSA or to the BoE, the PRA or the FCA in respect of their relevant functions;
- **'college of supervisors'** means permanent but flexible structures for collaboration, coordination and information-sharing among the authorities responsible for and involved in the supervision of cross-border banking groups<sup>1</sup> or similar structures;
- **'conduct supervision'** means supervisory activities performed by that Authority aimed at ensuring compliance with applicable requirements governing the conduct of supervised entities, including with respect to maintaining the integrity of financial markets and protecting consumers, to the extent compatible with the specific competences conferred on each Authority;
- **'cross-border establishment'** means a branch, a subsidiary or any other entity of a supervised entity operating or localised within one jurisdiction, and over which the Authority of the other jurisdiction exercises supervisory responsibilities;
- **'disclosing Authority'** means an Authority that discloses, or receives a request for disclosure of, confidential information within the meaning of and pursuant to this Memorandum of Understanding;
- **'EBA Regulation'** means Regulation (EU) No 1093/2010;
- **'early intervention measures'** means actions and measures taken by the Authorities that are similar to the measures specified in Article 27 of Directive 2014/59/EU;
- **'home authority'** means an Authority responsible for the supervision of the supervised entity on a consolidated basis<sup>2</sup>, and for the supervision of the supervised entity operating a branch in the jurisdiction of the host Authority;
- **'host authority'** means an Authority responsible for the supervision of the cross-border establishment of a supervised entity;
- **'jurisdiction'** means the territory of the country concerned under this Memorandum of Understanding, or the territory of the SSM Member States, where the ECB or national authorities are competent to carry out its supervisory tasks, taking into account the division of responsibilities between the ECB and the national authorities<sup>3</sup>;
- **'prudential supervision'** means supervisory activities performed by an Authority as provided for in the applicable legal framework for such Authority, aimed at ensuring supervised entities' compliance with applicable prudential requirements;
- **'receiving Authority'** means an Authority that has received, or makes a request for disclosure of, confidential information from a disclosing Authority pursuant to this Memorandum of Understanding;

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<sup>1</sup> See Basel Committee on Banking Supervision Principles for Effective Supervisory Colleges (<https://www.bis.org/publ/bcbs287.pdf>)

<sup>2</sup> consolidated basis means consolidation under either Authority's applicable legal framework.

<sup>3</sup> As described in Articles 4 and 6 of the SSM Regulation

- **'requesting Authority'** means an Authority that makes a request for the information to be provided pursuant to the this Memorandum of Understanding;
- **'risk assessment'** means a supervisory process undertaken by an Authority to form a view on the material prudential or conduct risks posed by activities of a supervised entity, focused on the Authority's areas of competence.
- **'SoR'** means a split of responsibilities document – a written cooperation and coordination arrangement setting out an agreed division of responsibilities between the PRA and the host supervisor for the supervision of UK branches of supervised entities headquartered in the home country, and more detailed arrangements for cooperation between the PRA and the host supervisor on the supervision of these branches
- **'SSM Member State'** means a European Union Member State whose currency is the euro, or a Member State whose currency is not the euro which has established a close cooperation with the ECB under Article 7 of the SSM Regulation;
- **'SSM'** means the system of financial supervision composed of the ECB and national competent authorities of participating Member States as described in Article 6 of the SSM Regulation;
- **'SSM Regulation'** means Regulation (EU) No 1024/2013;
- **'supervised entity'** means an entity, other than an insurance or reinsurance undertaking or a pension scheme, that falls within the prudential, conduct or AML supervisory remit , as applicable, of an Authority, as specified in their applicable legal framework;
- **'supervisory measures, measures, sanctions, penalties'** means supervisory actions taken by the Authorities in accordance with the applicable legal framework, in relation to a supervised entity or cross-border establishment;
- **'WCCA'** means a written cooperation and coordination arrangement for a particular college of supervisors of the kind referred to in article 21 of the EBA Regulation.

## Section I – General provisions

### Article 1

#### Purpose and general principles

1. Following the withdrawal of the United Kingdom from the European Union, the United Kingdom will become a third country within the meaning of European Union law, and European Union law will cease to apply to the United Kingdom.
2. The purpose of this Memorandum of Understanding (MoU) is to formalise supervisory cooperation and information sharing arrangements between
  - a. the Malta Financial Services Authority (the 'MFSA'), and
  - b. the Bank of England (the 'BoE') (including in its capacity as the Prudential Regulation Authority (the 'PRA')), and the Financial Conduct Authority (the 'FCA'), being the supervisory authorities of the United Kingdom.

Such cooperation is essential in order to promote the integrity, stability and efficiency of the supervised entities and financial system.

3. The UK Authorities acknowledge that in Malta it is the Financial Intelligence Analysis Unit (FIAU) which is the Government Agency responsible for combating money laundering and funding of terrorism in terms of law. However, in certain circumstances, the MFSA is authorised to act on its behalf in the supervision of AML/CFT compliance by subject persons falling under its competence and supervision, and when so doing, it is considered to be doing so in its capacity as an agent of the FIAU.
4. Supervisory cooperation and exchange of information between the Authorities under this MoU shall be provided only in relation to the performance of their tasks and responsibilities as the competent authority over supervised entities.
5. This MoU focuses on information exchange and supervisory cooperation between the UK Authorities on the one hand, and the MFSA on the other hand, in the field of prudential supervision of supervised entities and their cross-border establishments, [and, to the extent applicable pursuant to the specific competence conferred on each of the Authorities on conduct and AML/CFT supervision of supervised entities and their cross-border establishments]. This MoU complements any other memoranda of understanding between the Authorities.
6. This MoU is aimed at ensuring the effective cooperation and exchange of supervisory information for the performance of the Authorities' respective supervisory powers over supervised entities, to the extent permitted by their applicable legal framework, and in accordance with the highest standards for international supervision<sup>4</sup>.
7. The Authorities acknowledge that unless otherwise stated, all general provisions for supervisory cooperation and information exchange specified in Articles 1-6 of this MoU apply to the tasks specified in Section II of this MoU and are applicable to all provisions of that Section. References to proportionality considerations in Section II of this MoU include consideration of the materiality of the supervised entity or its cross-border establishments to the group and systemic importance and impact on financial stability in the jurisdictions of the requesting Authority and the Authority receiving the request. The Authorities acknowledge that the level of cooperation sought and provided is likely to be greater in relation to the supervised entities or their cross-border

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<sup>4</sup> For example Basel Committee on Banking Supervision (BCBS) Core principles for effective banking supervision (September 2012) <https://www.bis.org/publ/bcbs230.pdf>

establishments where these are material or systemically important to one or both of the Authorities.

8. The Authorities also recognise that where supervised entities and their cross-border establishments are both part of a group headquartered in a third country, the Authorities may inform the third-country group supervisor of any specific arrangements agreed between the Authorities for cooperation and exchange of information under the terms of this MoU. The circumstances in which onward disclosure of any confidential information received under this MoU may be made are set out in Article 4, along with the process which will be followed in such cases. This paragraph does not create any commitment in respect of information-sharing between one or both of the Authorities and a third-country group supervisor.
9. This MoU represents a statement of intent between the Authorities and does not constitute a legally binding and/or legally enforceable agreement. In particular, it does not: (a) create any rights or obligations for any of the Authorities or third parties; (b) modify or supersede any laws, regulations and requirements in force or applying to the Authorities; (c) affect any particular arrangement under a WCCA or SoR; and (d) represent a waiver to the immunity or the submission to the jurisdiction of any court. Neither Authorities nor any third party can bear or seek any liability regarding the performance of this MoU.
10. This MoU is not intended to create commitments for the UK Authorities in relation to each other,

## *Article 2*

### **Principles regarding exchange of information and assistance**

1. Each Authority intends to share and provide the other Authority, on a timely basis upon request, where appropriate and insofar as is feasible and to the extent permitted by their applicable legal framework, with any information or assistance under its supervisory remit that is necessary for the exercise of the other Authority's supervisory tasks or responsibilities.
2. The Authorities also intend to, on their own initiative and on a best efforts basis, share relevant information in their possession or discovered, regarding their supervised entities and/or cross-border establishments where such information relates to the following:
  - a. events with a potential to endanger the financial stability of the supervised entities or the financial system in the jurisdictions of the Authorities;
  - b. serious financial difficulties or relevant weaknesses related to the management, internal controls or reputation of a supervised entity and/or cross-border establishment, including information which gives rise to a suspicion of breach or likely breach of the applicable supervisory or legislative requirements in the jurisdictions of the Authorities;
  - c. material violation of laws by, sanctions imposed on, or any formal enforcement action taken in respect of, a supervised entity or its shareholders or management;
  - d. application of resolution tools, revocation of licence, or liquidation or similar,
  - e. [to the extent compatible with the specific competences conferred on each Authority, money laundering or terrorist financing risks related to the ownership and control of financial institutions and financial institutions' AML/CFT systems and controls; and situations where money laundering or terrorist financing risk has crystallised]; or
  - f. [to the extent compatible with the specific competences conferred on each Authority, risks related to the conduct of a supervised entity; including where those risks have crystallised].

3. The Authorities intend to share the information specified above as soon as practically possible and without undue delay after the determination by the Authorities of such events. The Authorities intend to provide information in written or electronic form to the relevant contact person identified in the contact list referred to in Article 3 of this MoU, unless specified otherwise in the request for such information.

4. In accordance with paragraph 1 above, the Authorities intend to provide and share information upon request from the other Authority. An Authority requesting the information intends to transmit a request for information in written or electronic form to the relevant contact person identified in the contact list referred to in Article 3 of this MoU.

5. A request for information or assistance referred to in paragraph 4 will include the following:

- a. a description of the facts underlying the request, and its purpose;
- b. if information is provided by the requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
- c. the reasons why the information is likely to be relevant for the proper performance of the requesting Authority's tasks in the field of prudential supervision, [conduct], or [AML/CTF supervision], as applicable, and in light of the requesting Authority's legislation, including a specification of the supervisory tasks that are connected with the subject matter of the request;
- d. to whom, if already known, onward disclosure of information provided to the requesting Authority is likely to be necessary as well as the need-to-know and the purpose of which such disclosure would serve;
- e. any information known to, or in the possession of, the requesting Authority that might assist the Authority receiving the request in fulfilling the request; and,
- f. reasonable time by which the response must be provided taking into account the nature and urgency of the request and information requested.

6. When receiving requests for information or assistance, the Authorities will, within the framework of this MoU, provide one another with assistance to better enable them to carry out the responsibilities entrusted to them under the legal framework applicable.

7. Following the consultation between the Authorities, assistance may be denied:

- a. where the cooperation would require an Authority to act in a manner that would violate the applicable legal framework;
- b. where a request for assistance is not falling within the scope of this MoU or is not made in accordance with the terms of this MoU;
- c. where the provision of information or assistance would be disproportionate or significantly disrupt the functioning of the Authority receiving the request; or
- d. on reasons of public interest.

Assistance will not be denied based on the fact that the type of conduct described in the request for assistance would not be a violation of the legal framework application in the jurisdiction of the Authority receiving the request.

8. If the request for information or assistance cannot be fulfilled in part or whole, the Authority receiving the request may consider other ways of assisting the requesting Authority, including whether assistance can be provided by another authority within its jurisdiction.

9. Where a request for information or assistance is denied on the basis of paragraph 7 of this Article, or the information requested is not available, the receiving Authority undertakes to provide the reasons for not sharing the information or not granting assistance.

10. The exchange of information is intended to be conducted in writing, regardless of its format (paper, electronic communication or other). Both the request for information and the communication of the requested information is intended to be addressed between the Authorities primarily through the designated contact persons identified in the contact list referred to in Article 3, unless specified otherwise in the request for information.

11. For the events specified in paragraph 2 of this Article, or for any other circumstances that can be classified as an urgent or emergency situation, the information may be exchanged or requested by telephone or through a physical meeting between the Authorities, including within the framework of colleges of supervisors. Unless otherwise agreed, such requests will be subsequently confirmed in writing within 5 working days.

12. The Authorities intend to also advise<sup>5</sup> each other upon request or on own initiative on any aspect of their regulatory and supervisory systems and notify any major change in their domestic rules and regulations within their jurisdiction which is likely to have a significant bearing on the activities of cross-border establishments.

### *Article 3*

#### **Contact lists**

1. In order to allow for smooth communication, the Authorities intend to nominate contact persons who represent them in the activities covered by this MoU (see list in Annex 1 providing the contact details of the contact persons).
2. At a minimum the contact lists established in accordance with this Article will contain relevant contacts, including emergency contact details, for the exchange of information in relation to: (i) supervision and authorisation matters, and (ii) policy and enforcement matters.
3. The Authorities intend to maintain up-to-date contact lists, and review the contact lists each year. The Authorities intend to inform each other of any changes in those contacts without undue delay. The Annex with the contact lists may be amended without the need to amend this MoU.

### *Article 4*

#### **Confidentiality**

1. The Authorities acknowledge that all information exchanged on the basis of this MoU may be confidential information within the meaning of the Authorities' applicable legal framework. The Authorities acknowledge that all information exchanged on the basis of this Memorandum of Understanding shall be treated as if it is confidential unless specified otherwise.
2. The Authorities will preserve the confidentiality of the information received to the extent permitted by the applicable legal framework. Any confidential information received by the Authorities on the basis of this MoU will be used exclusively within the responsibilities of the respective Authority for lawful supervisory purposes, and will not be disclosed except as set out below.

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<sup>5</sup> This should not be understood as legal advice and does not trigger any liability of the Authorities.

3. The Authorities will ensure that all persons dealing with, or having access to confidential information provided by the other Authority (including members of the Authority, employees, and any external providers having access to confidential information) are bound by the obligations of professional secrecy in compliance with the applicable legal frameworks, including after the termination of their duties.
4. In providing the confidential information by electronic format or transferring the electronic documents through the Internet, the Authorities should ensure an adequate level of data security.
5. The Authorities should have appropriate arrangements in place to store, transfer and control the scope of confidential information internally.
6. Except as provided in paragraph 7 and 8, before a receiving Authority discloses any confidential information received from another Authority to a third party, the receiving Authority will request and obtain prior written consent, which will not be unreasonably withheld, from the Authority that provided the information. Before disclosing the confidential information to such a third party<sup>6</sup>, the receiving Authority will obtain a commitment from that party that information will be kept confidential.
7. If the receiving Authority is required by statute or legal process to disclose confidential information received under this MoU to a third party, it will, to the extent permitted by law, inform the Authority that provided the information about such possible onward sharing. If the Authority that provided the information does not consent to such disclosure, then, the receiving Authority will take all available and appropriate steps to resist disclosure, including by employing legal means to challenge the order and by advising the third party requiring such information of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Authorities.
8. Subject to the conditions set out in Annex 2, where a receiving Authority transmits information to an onward sharing authority, it will notify the Authority that provided the information, ideally before the transmission of the information and, at the latest, within 30 days from such transmission.
9. No privileges or confidentiality associated with information provided by an Authority are intended to be waived as a result of sharing such information pursuant to this MoU.

#### *Article 5*

#### **Data protection**

1. The Authorities are bound by the applicable legal framework to the protection of personal data contained in the information that they exchange under the terms of this MoU.
  2. Requested information will usually not include customer account information unless this is of particular relevance to the supervisory concern prompting the request as may be the case in relation to AML/CFT. If this is the case, such customer account information will be collected and, to the extent permitted by law, will be provided by the disclosing Authority itself.
  3. The Authorities acknowledge on the one hand, that the MFSA processes personal data, including that contained in the information received from the UK Authorities, in accordance with the applicable EU legal framework, notably with [Regulation (EU) 2018/1725 or Regulation (EU) 2016/679], and on the other hand, that the UK Authorities process personal data, including that
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contained in information received from the MFSA, in accordance with Regulation (EU) 2016/679, as brought into UK law by virtue of section 3 of the EU (Withdrawal) Act 2018 (“UK GDPR”), and the Data Protection Act 2018.

4. The Authorities will ensure that in the absence of a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 or to Article 36(3) of Directive (EU) 2016/680, a transfer of personal data between them will comply with the conditions on transfers of personal data to third countries or international organisations as stipulated by the respective legislation.

#### *Article 6*

##### **Status of this Memorandum of Understanding**

1. This MoU is without prejudice to other specific cooperation arrangements that each Authority might conclude. It can, therefore, be supplemented with other more detailed and operational arrangements, including but not limited to WCCA, between the same Authorities agreed upon for the purpose of cooperating for the supervision of a specific supervised entity and its cross-border establishment, in accordance with the applicable legal framework.
2. Where one or more supervised entities headquartered in the Republic of Malta operates through a branch or branches in the UK and is a PRA -authorised bank or designated investment firm, the Authorities intend to agree and document the SoR between them for prudential supervision of those branches. That SoR document will also set out in more detail how the Authorities will cooperate in respect of the supervision of those branches, separate to but under the umbrella of this MoU, including provision for joint supervisory work. Where such branches exist, the Authorities will use their best endeavours to agree a SoR document by the date of application of this MoU, or otherwise as soon as possible thereafter, in form and substance satisfactory to the relevant Authorities.
3. The Authorities recognise that cooperation under this MoU may be denied on the grounds of the applicable legal framework, or public interest, as well as where it would interfere with an on-going investigation or jeopardise the proper performance of the tasks of the Authorities, including due to resources constraints.
4. The Authorities intend to settle any disagreement arising from the interpretation or the performance of this MoU amicably by means of consultations between the Authorities.
5. The MoU has been prepared and signed in three equal copies in English. Any amendment to this MoU, including this Article, will be made by the Authorities’ mutual consent, and formulated in English and have effect only if executed by the Authorities in writing.
6. This MoU enters into force on the date the EU Treaties and EU secondary legislation have ceased to apply in the United Kingdom.
7. Any Authority may terminate their participation to this MoU by giving 30 days’ prior written notice to the other Authorities. Any Authority terminating its participation in the MoU, will endeavour to take all reasonable steps to continue any prior projects or activities already in progress.
8. An Authority may terminate its participation to this MoU by giving notice to the other Authorities if the relevant professional secrecy regimes are not judged to be equivalent to the one applicable under the Authority’s relevant law, also having regard to any relevant assessment made by the EBA or UK Authorities as applicable.
9. In the event of termination, Article 4 of this MoU will continue to apply to any confidential information provided under this MoU prior to termination.

10. This MoU will, upon written request of an Authority, be subject to review.
11. This MoU (excluding Annex 1), may be made publicly available in full or part by any of the Authorities, at any time and in any manner including publication electronically on the websites of the Authorities.
12. In the case that one of the Authorities merges with another authority or agency or their competence is transferred to another authority or agency within their jurisdiction (succession), this MoU should be maintained with the same provisions, unless otherwise determined. This automatic succession will not affect the right of the Authorities, including any successor, to terminate the MoU in accordance with this Article.

## **Section II – Specific provisions**

### *Article 7*

#### **On-going coordination/cooperation**

1. In addition to the cooperation within the framework of colleges of supervisors as specified in Article 10, the Authorities may conduct regular meetings, as appropriate, to discuss general supervisory and coordination matters, issues concerning supervised entities that maintain cross-border establishments in their respective jurisdictions, and to review the effectiveness of this MoU.
2. The Authorities may also convene ad-hoc meetings to promote addressing supervisory problems concerning a cross-border establishment in the respective other jurisdiction, whenever either side reasonably requests on the basis that it has a material supervisory concern.
3. To facilitate the ongoing supervision of the supervised entities and their cross-border establishments, the Authorities may agree to establish supervisory examination programmes for specific supervised entities with cross-border establishments, where relevant within the framework of colleges of supervisors and following the processes specified in the WCCA. Such supervisory examination programmes may, where agreed, cover relevant tasks and activities, such as:
  - a. pre-planned meetings between authorities, including through the framework of colleges of supervisors;
  - b. pre-planned on-site examinations of the supervised entities and cross-border establishments;
  - c. pre-planned supervisory visits to the supervised entities and cross-border establishments;
  - d. pre-planned activities within the colleges of supervisors.

### *Article 8*

#### **Cooperation in relation to authorisation procedures, qualifying holdings assessments, fit and proper assessment of key function holders**

1. The Authorities intend to cooperate during the authorisation and licensing processes of supervised entities and their cross-border establishments, in the assessment of proposed acquisitions that require approval or non-objection from the relevant Authority where another Authority may possess relevant information, and in cases of withdrawal of a licence of a supervised entity operating in both the UK and EU.
2. Where a supervised entity applies for authorisation to an Authority to establish a new entity, or to acquire control of another entity, the Authority receiving the application may seek confirmation from the home Authority of that supervised entity that the home Authority has no objection to the application, and that the supervised entity is in compliance with the home Authority's requirements for authorisation. The Authority receiving the application may also seek confirmation from the home Authority whether it is aware of any material information in areas such as programmes of operation, type of business envisaged, the amount of own funds, solvency ratio and the historic track records of the supervised entity relevant to the other Authority's consideration of the application.

3. Subject to proportionality considerations, the Authorities intend to share upon request additional information to assist each other in assessing applications from supervised entities supervised by the Authorities in question, and in reaching their own decisions.
4. To the extent permitted by the applicable legal framework, the Authorities intend to share information upon request on the fitness and propriety of prospective directors and managers, shareholders, and, where relevant, key function holders, of a cross-border establishment. The communication of such personal data is subjected to the applicable data protection legal framework and in particular to the applicable rules on transfers of personal data.

#### *Article 9*

##### **Cooperation in relation to internal models or advanced approaches**

1. Subject to proportionality considerations, the Authorities intend to share views and information on their supervised entities' design and use of internal models such as the use of internal models in decision making, information on data and IT frameworks to ensure that all relevant information is properly reflected into the internal models, and controls and governance over approved internal models, where this may be relevant and material for an Authority's supervision of a supervised entity and its cross-border establishments.
2. Subject to proportionality considerations, the Authorities intend to share upon request relevant information in their possession, to assist each other in reaching their respective decisions on an internal model application from a supervised entity, such as the supervised entities' plans for implementing the internal models for regulatory purposes, the results of the Authorities' assessment and the main deficiencies identified.
3. Information requested as per this Article will be shared where available. It is understood that availability of this data will depend on the need for Authorities to collect such information, taking into account the principle of proportionality.
4. Where an Authority intends to perform an on-site inspection of a supervised entity's internal model in another Authority's jurisdiction, the Authorities intend to apply Article 12.

#### *Article 10*

##### **Organisation and functioning of colleges of supervisors**

1. Each Authority intends, subject to the applicable legal framework, to invite the other Authority to join the work of colleges of supervisors in respect of supervised entities with cross-border establishments, where these entities are individually or on a consolidated basis, supervised by the Authorities.
2. The establishment and functioning of individual colleges of supervisors, and terms of the participation of each of the Authorities, including their participation in various college sub-structures, if relevant, will be based on WCCAs to be determined, after consulting other college members, by the home Authority.
3. Within the framework of colleges of supervisors, the Authorities may consider entrustment of tasks when developing the college's supervisory examination programme. Entrustment of tasks does not alter the overall responsibilities of the Authorities.

## *Article 11*

### **Cooperation on ongoing supervision, including sharing of risk assessments**

1. Subject to proportionality considerations, the Authorities intend to share information on their risk assessments of supervised entities and their cross-border establishments, where the information is relevant and material to the other Authority in the performance of the ongoing supervision.
2. The Authorities may invite each other to participate in and contribute to an overall group risk assessment, for example as part of an overall college assessment.
3. When the Authorities agree to share information on their respective risk assessments, and where they agree to perform any joint work (such as joint examinations), the nature and format of any information provided will be agreed between the Authorities within the relevant college of supervisors.
4. The Authorities intend to provide the information specified in this Article as far as practicable and subject to the applicable legal framework, and in accordance with the principles set out in this MoU.

## *Article 12*

### **Cooperation in relation to on-site visits or inspections to cross-border establishments**

1. The Authorities intend to facilitate as far as practicable, and subject to the applicable legislation, the conduct of on-site visits or inspections of the cross border establishments situated in the other Authority's jurisdiction, or, where relevant for such cross-border establishments of the supervised entity, to the latter. Where assistance cannot be provided, the Authority requested to provide assistance intends to notify it to the other Authority as soon as deemed practical.
2. The Authorities intend to duly notify and mutually cooperate with each other on plans to inspect a cross-border establishment or supervised entity, or to appoint a third party to conduct an inspection on its behalf. The notification will be made by means of supervisory examination programme in accordance with Article 7 or by informing the Authority concerned in a timely manner for non-urgent inspections. This notification will detail the purposes, scope, expected starting and ending dates of the inspection, the cross-border establishment or supervised entity to be inspected, and the names of the persons leading the inspection.
3. The Authorities reserve the right to accompany each other on visits or inspections of cross-border establishments or supervised entities.
4. Where both the home Authority and host Authority agree to jointly perform a visit or inspection, they intend to give each other a possibility to comment on any reports produced prior to their submission to supervised entities or cross-border establishments.
5. Where only one Authority performs the on-site visit or inspection, the Authority performing the visit or examination intends to share any relevant findings or extracts of relevant reports with the non-participating Authority within a reasonable timeframe.
6. On-site examinations to the supervised entities and their cross-border establishments may be provided for in the supervisory examination programme in accordance with Article 7, or conducted on a case-by-case/ad-hoc basis in coordination between the Authorities.

## *Article 13*

### **Collection and exchange of supervisory and other information from the institutions and sharing such information between authorities**

1. Subject to proportionality considerations, the Authorities intend to share further information needed for the performance of their ongoing supervisory tasks and responsibilities in relation to the specific supervised entities and their cross-border establishments. Specific information-sharing arrangements may be further specified in the WCCAs.
2. Where it is agreed by the Authorities to be relevant and proportionate, such information may include, but is not limited to, the following:
  - a. capital and liquidity positions;
  - b. significant failures in a supervised entity's prudential governance or control arrangements, including major operational incidents, operational losses or IT system disruption, where relevant to its cross-border establishments;
  - c. material findings from a supervised entity's internal risk or audit functions relevant to the cross-border establishment;
  - d. material findings from external auditor reviews, where relevant to the cross-border establishment;
  - e. [to the extent compatible with the specific competencies conferred upon each Authority, information on money laundering/terrorist financing risks and the effectiveness of the supervised entity's AML/CFT systems and controls, where relevant for the cross-border establishment.
3. Before making requests for information to another Authority under this Article, the Authority seeking the information will consider whether it is more appropriate to request information which does not originally stem from the other Authority directly from the supervised entity or its cross-border establishment concerned. Such information stemming from the other Authority includes, amongst other things, the methods of supervision adopted by the Authorities, communications and transmissions of information between authorities, and between Authorities and supervised entities, and all other information contained in non-public statements or communications by the Authorities.

#### *Article 14*

### **Application of supervisory measures and sanctions on micro-prudential level, including early intervention measures**

1. The Authorities intend to inform each other in good time and to the extent reasonable about any event known to them which has the potential to endanger the stability of the supervised entities or cross-border establishments in the respective other jurisdiction. The Authorities intend to notify each other of material non-public administrative pecuniary penalties, enforcements or sanctions decisions, supervisory measures, or early intervention measures, which they have imposed in respect of such a cross-border establishment as host Authority or on the parent undertaking as home Authority.
2. The Authorities acknowledge that information regarding application of early intervention measures should, subject to the obligations placed upon them by their respective applicable legal framework, be shared with resolution authorities in their respective jurisdictions in accordance with the applicable legal framework.

3. The Authorities intend to provide the information specified in this Article as far as practicable and subject to the applicable legal framework, and in accordance with the principles set out in this MoU.

#### *Article 15*

##### **Application of macroprudential supervisory measures**

1. The Authorities recognise the unique competence of the host Authorities to assess which macroprudential measures are necessary for financial stability in the host jurisdiction. The Authorities intend to communicate with each other to exchange relevant assessments and to facilitate discussions in respect of planned measures where this may assist in assessing and mitigating risks to financial stability in their respective jurisdictions.

#### *Article 16*

##### **Assessment of recovery plan**

1. Without prejudice to their involvement in the colleges of supervisors and other relevant cross-border cooperation fora, the Authorities intend to assist each other in an assessment of the group recovery plan prepared by the supervised entities and, where relevant, their cross-border establishments insofar as it is relevant to the entities or cross-border establishments under their supervision. To facilitate such assessment, the Authorities intend to share in accordance with the applicable legal framework parts of the recovery plans prepared by the supervised entities or their cross-border establishments that are relevant for the other Authorities. The main objectives of the Authorities assisting each other in this assessment are to ensure a high standard of crisis prevention and to preserve the financial stability of the local market focusing on ensuring:
  - a. effective cooperation between supervisory authorities involved in crisis management,
  - b. reliable recovery options for the local operations, and continuity of any critical local economic functions.

#### *Article 17*

##### **Cooperation in relation to emergency situations /crisis management**

1. Without prejudice to Article 2 of this MoU, the Authorities intend to inform each other immediately if they become aware of an incipient crisis such as, but not limited to, serious financial difficulties which might have an adverse impact on operations relating to any supervised entity in the respective jurisdictions of the Authorities. The Authorities intend also to inform each other as soon as reasonably practical after a supervised entity or its cross-border establishment has activated their respective recovery plans or taken any recovery actions in accordance with the applicable legal framework.
2. To the extent possible, and without prejudice to their involvement in the relevant cross-border cooperation fora, the Authorities intend to seek coordinated responses to any crisis emerging in a cross-border establishment operating in their respective jurisdictions, in accordance with the applicable legal frameworks.
3. If an Authority is taking any action, including early intervention measures, that could trigger instability elsewhere in a supervised entity or group or in the financial system of another Authority's jurisdiction, wherever and to the extent possible, the Authorities intend to cooperate in seeking potential solutions while acknowledging that each Authority reserves the right to act

on its own initiative if necessary to preserve domestic financial stability or achieve any other domestic resolution objectives, in the absence of effective early intervention or other actions taken by another Authority, in line with the applicable legal framework.

#### *Article 18*

##### **Cooperation and information exchange in relation to enforcement**

1. The Authorities recognise that there may be circumstances in which either of them wishes to take enforcement action in a situation where the other Authority has a regulatory interest. The Authorities intend to cooperate in carrying out enforcement actions to the extent possible under their applicable legal frameworks.
2. If a request for assistance, as described in this MoU, relates to actual or possible enforcement action, the request should include as much detail as possible to allow the other Authority to consider the request (for example, a description of the conduct or suspected conduct, applicable legal framework, the link between the specified rule or law and the regulatory functions of the requesting Authority, and whether certain Persons should be present during interviews which form part of an investigation).
3. Similarly, where an investigation concerns suspected breaches of the law of both jurisdictions, the Authority suggesting the establishment of a joint investigation involving members from both Authorities should provide the other Authority with as much detail as possible to allow the other Authority to consider the nature, expected duration, funding, management and objectives of the joint investigation.

#### *Article 19*

##### **Cooperation and information exchange in relation to financial crime**

1. Insofar as applicable, the Authorities intend to co-operate closely within the parameters of their respective national legislation, both in relation to AML/CFT compliance, and when they identify suspected financial crime activities in supervised entities. For the purposes of this MoU, financial crimes include in particular: money laundering and all violations of the UK, EU and national laws and regulations on financial markets. This also includes unauthorised activities.
2. Without prejudice to their domestic provisions on privacy and data protection, all information exchanged by the Authorities in the area of the prevention of money laundering and counter terrorist financing shall be treated confidentially and used exclusively for supervisory purposes, to the extent permitted by the applicable legal frameworks and within the competences of the Authorities.
3. In the event when an Authority, during an examination or inspection conducted on the territory of the counterparty's jurisdiction, detects a serious criminal violation of the applicable legal framework of its jurisdiction, the Authority may be under a strict legal obligation to pass the information immediately to the appropriate law enforcement authorities in its home country. In these circumstances, to the extent permitted by law, the Authority should inform the other Authority of its intended action. The Authority, upon completion of an on-site inspection of a cross-border establishment in which the other Authority did not participate, in case of request received or if it considers it necessary, will intend as soon as possible to provide the other Authority with general information on the financial condition of the cross-border establishment, violations of legal acts identified and deficiencies found, including those related to the prevention of money laundering and financing terrorism.



4. Since the MFSA acts in its capacity as agent of the FIAU insofar as concerns the supervision of AML/CFT compliance by subject persons falling under the MFSA's competence and supervision, the MFSA would require the express written consent of the FIAU in order to disclose information to the UK Authorities on anti-money laundering and the funding of terrorism in this regard where such information has been acquired by the MFSA through such a supervisory engagement with FIAU or otherwise provided to the MFSA by the FIAU in relation to AML/CFT matters.
5. Moreover, notwithstanding anything contained in this MoU, when cooperation in AML/CFT supervision will be sought or pursued by the UK Authorities, the MFSA, as agent of the FIAU on AML/CFT matters, shall be obliged to liaise with, and obtain the prior approval of, the FIAU as the AML/CFT supervisor in Malta, before the MFSA can assist and cooperate with the UK Authorities on such AML/CFT matters.

*Article 20*

**External communication, including in times of stress and emergency situations**

1. The Authorities intend to notify each other of any intended public communication regarding the cross-border establishments and supervised entities, when relevant for their cross border establishments, before their publication, in particular during emergency situations.

*Article 21*

**Notification practice and procedure**

1. To the extent permitted by the applicable legal framework for each Authority, each Authority intends to notify the other, on a timely basis, of any relevant, material changes in their respective legislative provisions relating to privacy and protection of information.

Signed at Valetta and London on the dates appended to each signature in three original copies signed by the duly authorised representatives.

For the Malta Financial Services Authority:

Joseph Cuschieri,  
Chief Executive Officer,  
Malta Financial Services Authority

..... Date:

For the Bank of England

Sam Woods, Deputy Governor, Prudential Regulation, Bank of England. For and on behalf of the Bank of England (including in its capacity as the Prudential Regulation Authority)

..... Date:

For the Financial Conduct Authority

Andrew Bailey, Chief Executive

..... Date:

## **Annex 1 - Contact details of contact persons**

## **Annex 2 - Onward sharing authorities**

### *Article 1*

#### *List of onward sharing authorities*

For the purposes of Article 4(8) of the MoU, onward sharing authorities means any of the authorities listed below, or their successor entities, when fulfilling the conditions which are set out in Article 2 of this Annex:

- (a) For the UK:
  - the Bank of England,
  - the Financial Conduct Authority,
  - the Financial Reporting Council,
  - the Financial Services Compensation Scheme,
  - the Payment Systems Regulator and
  - national authorities or bodies charged with a function set out in Article 2(3) of this Annex
- (b) For Malta :
  1. - competent authorities as referred to in Article 4 (2) of Regulation 1093/2010, particularly the
    - Malta Financial Services Authority;
    - Management Committee of the Depositor Compensation Scheme;
    - Central Bank of Malta;
    - Ministry for Finance;
    - Financial Intelligence Analysis Unit.
  2. national authorities or bodies charged with a function set out in Article 2 (3) of this Annex.
- (c) For all Authorities:
  - the EBA, ESMA, EIOPA and the ESRB.

### *Article 2*

#### *Conditions*

For the purposes of Article 4(8) of the MoU, an authority listed in Article 1 of this Annex shall be considered as an onward sharing authority, under the following conditions:

- (1) Confidential Information is transmitted by any of the Authorities to the onward sharing authority only where necessary for the performance of the authorities' lawful supervisory tasks;
- (2) Confidential information is needed for the discharge of the own supervisory functions of the onward sharing authority;
- (3) The supervisory function for which confidential information is needed by an onward sharing authority is one of the following:
  - (a) the public duty of supervising other financial sector entities and the supervision of financial markets;
  - (b) the responsibility for maintaining the stability of the financial system through the use of macroprudential rules;
  - (c) the protection of the stability of the financial system;
  - (d) the administration of contractual or institutional protection schemes, that is a contractual or statutory liability arrangement which has been authorized by the competent authority under the applicable law to protect member institutions and in particular ensure their liquidity and solvency to avoid bankruptcy where necessary;

- (e) the overseeing of bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;
  - (f) the prevention of the use of the financial system for the purposes of money laundering and terrorist financing;
  - (g) the administration of deposit-guarantee schemes and investor compensation schemes;
  - (h) the overseeing of persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions;
  - (j) recovery, early intervention and resolution of institutions.
- (4) The information received shall in any event be subject under the applicable law to professional secrecy requirements at least equivalent to those applicable to the authority that provided the information. The equivalence of the confidentiality regime applicable to the UK authorities and to the MFSA shall be evaluated having regard to the EBA assessment;
- (5) In addition to such professional secrecy requirements as may be required by law, confidential information will not be further disclosed by the onward sharing authority, except to other authorities listed in Article 1 of this Annex, and subject to the obligation to notify the Authority which provided the information in accordance with Article 4(8) of the MoU or as authorised by the authority which has provided the information in accordance with Article 4(6) of the MoU.

### *Article 3*

#### *Notification*

By way of derogation to Article 4(8), [*no notification is required*] in the following cases:

- (a) For the UK, where information is shared within the Bank of England or shared between the Bank of England and the Financial Conduct Authority, for the purposes of carrying out their functions set out in Article 2(3) of this Annex;
- (b) For the MFSA, where information is shared within the Single Supervisory Mechanism as referred to in Regulation (EU) 1024/2013 or the European System of Financial Supervisors as referred to in Regulations (EU) No 1093/2010 for the purposes of carrying out the functions set out in Article 2(3) of this Annex.