



**Financial Services Commission
Mauritius**

Memorandum of Understanding

between

**The Financial Conduct Authority, United Kingdom
(FCA UK)**

And

**The Financial Services Commission, Mauritius
(FSC Mauritius)**

2018

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Memorandum of Understanding (“MoU”)

between

Financial Conduct Authority, and Financial Services Commission
United Kingdom (“FCA UK”) Mauritius (“FSC Mauritius”)

Recitals

A. The Financial Conduct Authority, United Kingdom (hereinafter "FCA UK") and the Financial Services Commission, Mauritius (hereinafter "FSC Mauritius", each an “Authority” and together hereinafter referred to as “the Authorities”) recognise the need for mutual cooperation between the Authorities in carrying out their regulatory and supervisory functions under the relevant laws, regulations and rules in their respective jurisdictions.

The FCA UK’s remit and responsibilities are defined in the Financial Services and Markets Act 2000 (FSMA). The FCA UK is responsible for ensuring that relevant markets function well through ensuring an appropriate degree of consumer protection; protecting and enhancing the integrity of the UK financial system; and promoting effective competition in the interests of consumers. It is responsible for the conduct regulation of all financial services firms in the UK and is responsible for making and enforcing rules governing the conduct of regulated firms; regulating standards of conduct in retail and wholesale markets; supervising the trading infrastructure that supports those markets; the prudential supervision of firms that are not regulated by the Prudential Regulation Authority (PRA); and the functions of the UK Listing Authority (UKLA).

The FSC Mauritius is deemed to be established under the Financial Services Act 2007 and is the integrated regulator for the financial services sector other than banking, and global business. The FSC Mauritius operates within a modern and internationally recognised legal framework and licenses, regulates, monitors and supervises the conduct of business activities in the non-banking financial services sector.

The Authorities acknowledge the importance of international co-operation to the development and maintenance of an open, fair, orderly and sound financial services industry in Mauritius and UK respectively, and agree to cooperate with each other on matters in the interests of fulfilling their respective regulatory mandates.

1. Definition

Intention

- B. This Memorandum of Understanding (“MoU”) sets forth a statement of intent of the Authorities to establish a framework for mutual assistance and to facilitate the exchange of information between the Authorities in order to enhance their respective regulatory functions.
- C. This MoU does not alter the terms and conditions of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (“IOSCO MMoU”), to which the Authorities are signatories, nor the parties’ participation in the IOSCO MMoU. The IOSCO MMoU covers cooperation and information-sharing for purposes of enforcing and securing compliance of Laws and Regulations as defined in the IOSCO MMoU including providing assistance in the context of investigations.

Operative Part

Interpretation

In this MoU, unless the context requires otherwise:

“applicable laws, regulations and requirements” means any law, regulation or requirement applicable in the United Kingdom and/or in Mauritius, and where the context permits include any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;

“Authority” means the FCA UK or the FSC Mauritius;

“FCA UK” means the Financial Conduct Authority of the United Kingdom (or its successor);

“FSC Mauritius” means the Financial Services Commission of Mauritius;

“Requested Authority” means the authority to whom the request is made under this MoU;

“Requesting Authority” means the authority making a request under this MoU;

“Onward Receiving Authority” means:

(a) in respect of the FCA UK: the PRA and/or the Bank of England; or

(b) in respect of the FSC Mauritius: the Bank of Mauritius;

“person” means a natural person, legal entity, partnership or unincorporated association.

2. Purpose and Principles

- 2.1 The purpose of this MoU is to establish a formal basis for co-operation, including the exchange of information and investigative assistance in connection with the supervision and oversight of relevant regulated entities in the UK and Mauritius respectively.

2.2 This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, the United Kingdom or Mauritius. This MoU sets forth a statement of intent and accordingly does not create any enforceable rights. This MoU does not affect any arrangements under other MoUs.

2.3 The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

3. Provision of Unsolicited Information

The Authorities may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made.

4. Requests for Assistance

4.1 To the extent permitted by law, the Requested Authority will take all reasonable steps to obtain and provide the information sought.

4.2 If a request for assistance is made, each Authority will use reasonable efforts to provide mutual assistance to the other, subject to its laws and overall policy. This may include:

- a) providing information in the possession of the Requested Authority;
- b) confirming or verifying information provided to it for that purpose by the Requesting Authority;
- c) exchanging information on or discussing issues of mutual interest;
- d) obtaining specified information and documents from persons;
- e) questioning or taking testimony of persons designated by the Requesting Authority;
- f) conducting inspections, investigations, inquiries or examinations of financial services providers or arranging for the same; and
- g) permitting the representatives of the Requesting Authority to participate in the conduct of enquiries made by or on behalf of the Requested Authority pursuant to paragraphs e) - f) above.

5. Procedure for Requests

Requests for the provision of information or other assistance will be made in writing or made orally and, unless otherwise agreed, confirmed in writing within 5 business days. To facilitate assistance, the Requesting Authority should specify in any written request:

- a) the information or other assistance requested (identity of persons, specific questions to be asked etc.);
- 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 purpose for which the information or other assistance is sought;
- d) to whom, if anyone, onward disclosure of information provided to the Requesting Authority is likely to be necessary and the purpose such disclosure would serve;
- e) if the request for assistance is for the purpose of actual or possible enforcement action, the matters set out in clause 1 of Appendix B; and
- f) any other matters specified by the Requested Authority and by the applicable laws, regulations and requirements in relation to the Requested Authority.

6. Assessing Requests

6.1 Each request will be assessed on a case-by-case basis by the Requested Authority to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the Requested Authority will consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.

6.2 In deciding whether and to what extent to fulfil a request, the Requested Authority may take into account:

- a) whether the request conforms with this MoU;
- b) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the Requested Authority's functions;
- c) whether it would be otherwise contrary to the public interest or the essential national interest of the Requested Authority's jurisdiction to give the assistance sought;
- d) if the request for assistance is for the purpose of actual or possible enforcement action, the further matter set out in clause 2 of Appendix B;
- e) whether the request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the Requested Authority;
- f) whether complying with the request may otherwise be prejudicial to the performance by the Requested Authority of its functions; and
- g) any other matters specified by the laws, regulations and requirements of the requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness).

6.3 The Authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 6.2 above. The Requested Authority will provide reasons why it is denying the assistance.

7. Contact Points

The Authorities have provided a designated contact person to whom information or requests for assistance under this MoU should be directed as set out in Appendix A.

8. Further Procedures for Enforcement Matters

The further procedures set out in Appendix B will apply in relation to actual or possible enforcement matters.

9. Costs

The Requested Authority may, as a condition of agreeing to give assistance under this MoU, require the Requesting Authority to make a contribution to costs, if the cost of fulfilling a request is likely to be substantial.

10. Permissible Uses of Information

10.1 The Requesting Authority may use non-public information obtained under the terms of this MoU solely for the purpose stated in the request for information.

10.2 The Authorities to which unsolicited information is supplied will use this information solely for the purposes stated in the transmission letter.

10.3 If an Authority intends to use or disclose information furnished under this MOU for any purposes other than those stated in the request or the transmission letter accompanying unsolicited information, it must obtain the prior consent in writing of the Authority which provided the information. If the Requested Authority consents to the use of information for purposes other than those stated, it may subject it to certain conditions.

11. Confidentiality

11.1 Each Authority shall treat any non-public information obtained under this MoU as confidential and shall not onward disclose it without first obtaining the consent of the Requested Authority.

- 11.2 Each Authority will keep confidential any request for assistance made under this MoU, the contents of such requests and any matters arising under this MoU, including consultations between the Authorities and unsolicited assistance. After consultation with the Requesting Authority, the Requested Authority may disclose the fact that the Requesting Authority has made the request if such disclosure is required to carry out the request.
- 11.3 The Authorities acknowledge that:
- (a) the Authorities' confidential treatment of assistance and information will continue after the termination of this MoU; and
 - (b) the Authorities understand that the laws, regulations and rules of their respective jurisdictions place limitation on use and disclosure of non-public information obtained pursuant to this MoU.
- 11.4 In the event of a legally enforceable demand to disclose information supplied under this MoU, the Authority subject to the demand will notify the other Authority that supplied the information of the demand prior to complying with the demand and will assert such appropriate legal exemptions or privileges with respect to that information as may be available. The Requesting Authority will use its best efforts to protect the confidentiality of non-public documents and information received under this MoU.
- 11.5 If an Authority decides to make public an administrative or a disciplinary sanction within the course of its duties, it may with the consent of the Authority providing the information, indicate that a successful outcome of the case has been achieved with the aid of the international co-operation mechanisms provided for in this MoU.

12. Disclosure to other domestic authorities

- 12.1 Notwithstanding paragraph 11 of this MoU, an Authority may disclose any non-public information it receives under this MoU to an Onward Receiving Authority without first consulting the Authority that supplied the information, and without needing to resist a demand from the Onward Receiving Authority for disclosure, provided that:
- (a) such disclosure is made in accordance with applicable laws, regulations and requirements;
 - (b) such disclosure is for the purposes of the lawful public functions of the Authority making the disclosure and/or the Onward Receiving Authority; and
 - (c) the Onward Receiving Authority is required to maintain a level of confidentiality in respect of the non-public information that is at least equivalent to that which the Authority making the disclosure is subject to (including, where relevant, restrictions or conditions imposed on it by the Authority that supplied the information).

An Authority disclosing non- public information to an Onward Receiving Authority, will notify the Authority that initially supplied the information of the lawful disclosure as soon as practicable.

13. Consultation

- 13.1 The Authorities will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters.
- 13.2 Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement in both the territory of the Requesting and the Requested Authorities, the relevant Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

14. Publication

Either, or both, Authorities may make a copy of this MoU, or the text of it, publicly available subject to prior notification of the other Authority.

15. Termination of Memorandum of Understanding

- 15.1 This MoU will continue in effect for an indefinite period but will terminate upon the expiration of thirty days after either Authority gives written notice to the other Authority of its intention to terminate the MoU.
- 15.2 If either Authority gives any such notice, this MoU will continue to have effect with respect to all requests for assistance that either Authority had made before the effective date of notification until the Requesting Authority terminates the matter for which it requested assistance.

16. Effective Date

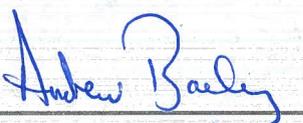
This MoU will be effective from the date of its signing by the Authorities.

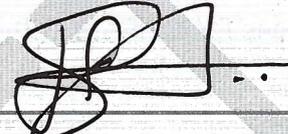
SIGNED THIS _____ DAY OF _____ 2018 IN _____

Executed by the Authorities

For the FCA UK

For the FSC Mauritius





Mr Andrew Bailey, Chief Executive

Mr Harvesh Seegolam, Chief Executive

Date: 10th April 2018.

Date: 15/04/18.

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APPENDIX A

1. For purposes of communications or notices with respect to this MoU, the correspondence shall be directed to the following representatives:

FCA UK	FSC Mauritius
<p><i>For information related to regulated entities:</i></p> <p><i>Director of Enforcement and Market Oversight</i></p>	<p>Chief Executive</p>
<p>25 The North Colonnade Canary Wharf, London E14 5HS</p>	<p>FSC House 54 Cybercity Ebene Mauritius</p>
<p>Email: internationalenforcementrequests@fca.org.uk</p>	<p>Tel: (230) 403-7000 Fax: (230) 467-7172 Email: rfi@fscmauritius.org fscmauritius@intnet.mu</p>
<p>For all other matters;</p> <p>International Division 25 The North Colonnade Canary Wharf, London E14 5HS</p> <p>Email: international.affairs@fca.org.uk</p>	<p>For all other matters,</p> <p>Email: intrelations@fscmauritius.org fscmauritius@intnet.mu</p>

2. It will be the duty of the Authorities to notify the other in the event of change of communication particulars or correspondence details by giving a written notice within fourteen (14) days of such change.

Appendix B: Further Procedures for Enforcement Matters

Further details to be contained in requests for assistance

1. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following additional details will be contained in the request:
 - (a) a description of the conduct or suspected conduct which gives rise to the request;
 - (b) details of the applicable law, regulation or requirement to the administration of which the request is relevant;
 - (c) the link between the specified rule or law and the regulatory functions of the Requesting Authority;
 - (d) the relevance of the requested assistance to the specified rule or law; and
 - (e) whether it is desired that, to the extent permitted by the laws applying to the requested Authority, any persons from the country of the Requesting Authority should be present during interviews which form part of an investigation, and whether it is desired that such persons should be permitted to participate in the questioning (as to which see clause 3 below).

Further ground for denial of request

2. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further matter may be taken into account by the requested Authority in determining whether to fulfil the request in whole or in part: whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a person who in the opinion of the Requested Authority has already been appropriately dealt with in relation to the alleged breach the subject-matter of the request.

Requests to Sit in

3. If, following a request from the Requesting Authority, the Requested Authority conducts an interview of any person, the Requested Authority may permit a representative of the Requesting Authority to attend such an interview and to ask questions. Such requests will be in accordance with the applicable laws, regulations and requirements of the Requested Authority. Requests for such assistance should also conform to any published guidance for the making of such requests issued by the Requested Authority.

Joint Investigations

4. The Authorities acknowledge that, subject to secrecy and confidentiality issues, an investigation, where it concerns suspected breaches of the law of both jurisdictions, may be conducted more effectively by the establishment of a joint investigation involving members from both Authorities.

5. The Authority suggesting the joint investigation will advise the other Authority of the background to the request for a joint investigation, and liaise with the other Authority to determine the likely objectives of the joint investigation, the expected resources required and the approximate duration of the proposed joint investigation. Each Authority will advise the other as soon as possible as to whether it will agree to such an investigation.
6. If the Authorities agree to take part in a joint investigation, an agreed initial action plan will be prepared setting out, among other things, the objectives, expected duration, funding, publicity and accountability arrangements, management of the joint investigation, and allocation of responsibilities.
7. Suggestions to the FCA UK for a joint investigation should be made through the Director of Enforcement and Market Oversight. Suggestions to the FSC Mauritius should be made to the Chief Executive.

Rights of persons preserved

8. Any person providing testimony, information or documents as a result of a request made under this MoU will be entitled to all the rights and protections of the laws of the jurisdiction of the Requested Authority. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the Requesting Authority, the Authorities will consult to determine the most appropriate way to proceed.

