

STATES OF JERSEY



JERSEY FINANCIAL SERVICES COMMISSION AND THE ECONOMIC DEVELOPMENT COMMITTEE: MEMORANDUM OF UNDERSTANDING

**Presented to the States on 15th March 2005
by the Economic Development Committee**

STATES GREFFE



**JERSEY FINANCIAL SERVICES
COMMISSION**

States of Jersey

**Economic Development
Committee**

MEMORANDUM OF UNDERSTANDING

between

**the Jersey Financial Services Commission
(the “Commission”)**

and

**the Economic Development Committee of the States of Jersey
(the “Committee”)**

Article 11 of the Financial Services Commission (Jersey) Law 1998

Memorandum of Understanding
Article 11 of the Financial Services Commission (Jersey) Law 1998

1. Recitals

- 1.1 The Commission is the Island's financial services regulator and was established under Article 2 of the Financial Services Commission (Jersey) Law 1998 (the "**Law**") as a body corporate with perpetual succession.
- 1.2 The Committee is a committee established by the States of Jersey that holds particular powers under Article 11 of the Law.
- 1.3 Whilst the Commission is an independent body, it is in practice accountable for its overall performance to the States of Jersey through the Committee.

2. Purpose of this Memorandum of Understanding

- 2.1 Article 11 of the Law provides that:
- 2.1.1 The Committee may, after consulting the Commission and where it considers that it is necessary in the public interest to do so, give to the Commission guidance or give in writing general directions in respect of the policies to be followed by the Commission in relation to the supervision, development and promotion of financial services in the Island and the manner in which any function of the Commission is to be carried out.
- 2.1.2 It shall be the duty of the Commission in carrying out any of its functions to have regard to any guidance and to act in accordance with any directions given to it by the Committee under this Article.
- 2.2 The Commission and the Committee wish to enter into this Memorandum of Understanding to clarify certain matters concerning the use of the power granted to the Committee under Article 11 of the Law. This follows concern expressed by the International Monetary Fund that the power of the Committee to give guidance or direction to the Commission "could affect the operational independence of the Commission and its carrying out of its regulatory obligations".^[1]
- 2.3 Articles 5 and 6 of the Law confer on the Commission certain functions. In the light of the International Monetary Fund's concerns, this Memorandum of Understanding focuses particularly on the Commission's responsibility for the supervision and development of financial services in the Island under the following laws:
- Financial Services (Jersey) Law 1998
 - Banking Business (Jersey) Law 1991
 - Collective Investment Funds (Jersey) Law 1988
 - Insurance Business (Jersey) Law 1996
 - Borrowing (Control) (Jersey) Law 1947

3. Use of the powers granted under Article 11 of the Law

- 3.1 The Committee confirms that the powers granted to it under Article 11 of the Law would only be used when exceptional circumstances make it necessary to do so in the public interest, and that there is no

intention to use the powers on a regular, or routine, basis.

3.2 The Committee recognises that the Commission, in exercising any of its functions, is required, under Article 7 of the Law, to have regard to certain “Guiding Principles”. These are:

3.2.1 the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or the financial unsoundness of persons carrying on the business of financial services in or from within the Island;

3.2.2 the protection and enhancement of the reputation and integrity of the Island in commercial and financial matters; and

3.2.3 the best economic interests of the Island.

3.3 In pursuit of these statutory Guiding Principles, and in particular 3.2.2, the Commission also considers that it has a role in contributing to the fight against financial crime.

3.4 The Committee confirms that, should it find it necessary to exercise the power granted to it under Article 11 of the Law, it would do so in a manner which would be in accord with the Commission’s obligations to have regard to the Guiding Principles listed in Article 7 of the Law when exercising any of its functions, or with the Commission’s role in contributing to the fight against financial crime.

3.5 The Committee acknowledges that, following the repeal of Article 5(1)(b) of the Law in November 2001 the Commission no longer has any responsibility for promoting the Island as a centre for financial services. The Committee therefore confirms that, notwithstanding the provisions of Article 11, where it refers to “promoting the Island as a centre for financial services”, it will not give either guidance or direction that would require the Commission to engage in the exercise of any responsibility of this nature.

3.6 The Committee accepts the Commission’s interpretation of the Guiding Principle to have regard to “the best economic interests of the Island”, namely that:

3.6.1 the Commission should have regard to any Strategic Plan or Economic Growth Plan for the Island approved by the States of Jersey from time to time;

3.6.2 the Commission should take full account of the costs and other burden of regulation;

3.6.3 subject to the need to maintain regulatory standards, the Commission should assist in the development of business; but

3.6.4 the Commission should not compromise regulatory standards in order to allow a line of business which a section of the Industry might find attractive.

3.7 Paragraph 3.6.2 above refers to the Commission’s role in the development of business. The Committee agrees with the Commission that a distinction should be drawn between “development” in the context of regulatory legislation and “development” in the context of legislation supporting opportunities for business expansion. A distinction can be drawn between regulatory legislation where the Commission is the initiator and Government is consulted and business development legislation where the Government is the initiator and the Commission is consulted. The Commission’s role in responding to Governmental development initiatives is as a facilitator through appropriately balanced, pragmatic and flexible regulation.

4. The nature of guidance or direction

4.1 The Committee notes that under Article 11 of the Law it may only exercise its power to give to the Commission guidance or direction when it is in the public interest.

- 4.2 The Committee confirms that any guidance as well as any direction given by it will be general in nature and will not be used so as to influence particular cases, e.g. to require the Commission to grant (or refuse) a regulatory consent in relation to a particular person.
- 4.3 Whilst not limiting its discretion, the Committee confirms that any guidance or direction given by it will generally relate to:
- 4.3.1 matters of public policy that the Committee considers that the Commission should take into account in carrying out its responsibilities in relation to the supervision and development of financial services in the Island;
 - 4.3.2 matters relating to the economy, efficiency and effectiveness of the Commission;
 - 4.3.3 matters relating to the accountability of the Commission; or
 - 4.3.4 ensuring that the Commission adheres to what are generally accepted in Jersey and the United Kingdom as being principles of good corporate governance.
- 4.4 The Committee confirms that any guidance or direction of the type referred to in paragraph 4.3.1 above will not prejudice the operational independence of the Commission by dictating the specific manner in which the Commission should carry out its responsibilities in relation to the supervision and development of financial services in the Island.
- 4.5 The Committee recognises that the Island is committed (whether by a decision of the States of Jersey, or one of the committees of the States, or otherwise), to complying with standards set by internationally recognised bodies (for example, on anti-money laundering provisions). The Committee notes that it is in the public interest to honour such commitments and it will not give any guidance or direction that could adversely affect the ability to do so.

5. Procedure for the use of the powers granted under Article 11

- 5.1 The Committee notes that Article 11 of the Law requires the Committee to consult the Commission before giving it guidance or direction.
- 5.2 The Committee recognises the importance of the Commission being given sufficient opportunity to comment on any proposed guidance or direction. To facilitate this, the Committee confirms that it will give the Commission a consultation period of at least two months. However, the Committee reserves the right to reduce the length of the consultation period should exceptional circumstances require it.
- 5.3 The Committee confirms that any guidance or direction would be given in writing to the Chairman of the Commission by means of a copy of the relevant Act of the Committee, certified by the Greffier of the States as being a true copy of that Act.

6. Publication of guidance or direction

- 6.1 The Committee recognises that it should be held publicly accountable in respect of any guidance or direction given to the Commission.
- 6.2 The Committee confirms that within three working days of any guidance or direction having been given to the Commission, it will publish in a manner calculated to bring it to the attention of the public a statement containing details of the guidance or direction and the reasons for giving it.
- 6.3 The Committee further confirms that such a statement shall be laid before the States of Jersey at the earliest practicable opportunity.
- 6.4 The Committee recognises that the Commission may wish to separately publicise the existence of any

guidance or direction and agrees that the Commission may do so in any manner it sees fit.

7. Amendments to this Memorandum of Understanding

7.1 This Memorandum of Understanding may be amended by the agreement, in writing, of both the Commission and the Committee.

8. Effective date

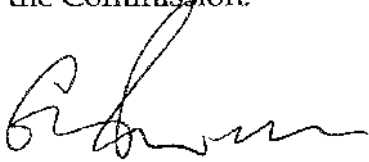
8.1 This Memorandum of Understanding will be effective from the date of its signing by the Commission and the Committee.

9. Publishing this Memorandum of Understanding

9.1 The Committee and/or the Commission will make a copy of this Memorandum of Understanding, or the text of it, publicly available.

Executed by the parties:

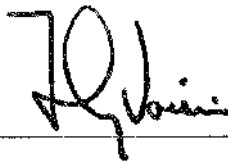
For the Commission:



Geoffrey Colin Powell OBE
Chairman

Date: 2nd March 2005

For the Committee:



Deputy Francis Gerald Voisin
President

Date: 3rd MARCH 2005

[1] Source: International Monetary Fund's October 2003 'Assessment of the Supervision and Regulation of the Financial Sector'.