

**MEMORANDUM  
OF  
UNDERSTANDING**

**POLAND**

**Komisja Nadzoru  
Finansowego**

**GUERNSEY**

**Guernsey Financial  
Services Commission**

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# Memorandum of Understanding ("MoU")

between

Komisja Nadzoru Finansowego-  
the Polish Financial Supervision  
Authority ("KNF")

and

Guernsey Financial Services  
Commission  
("Guernsey FSC")

## Recitals

- A. The KNF has been established under the Polish Act of July 21st 2006 on Financial Market Supervision. Its statutory powers include licensing, supervision and investigation of financial market participants. KNF has the ability to exercise its powers for the purpose of co-operation with foreign authorities. The KNF is responsible for the regulation, supervision and inspection of all sectors of the financial market in the Republic of Poland, including banking, insurance and pensions and capital market institutions.
- B. The Guernsey FSC is established under the Financial Services Commission (Guernsey) Law, 1987, as amended, to supervise and regulate financial services in the Bailiwick of Guernsey, to protect the public interest and protect and enhance the reputation of the Bailiwick as a financial centre.
- C. The KNF and the Guernsey FSC wish to enter into this MoU to provide a formal basis for co-operation, including the exchange of information and investigative assistance. The KNF and the Guernsey FSC believe such co-operation will enable them to perform their functions more effectively.

# Operative Part

## Interpretation

1. In this MoU, unless the context requires otherwise:

"administering" an applicable law, regulation or requirement includes enforcing the same;

"applicable laws, regulations and requirements" means any law, regulation or requirement applicable in Poland or in Guernsey, and where the context permits includes:

- (a) any law, regulation or requirement applicable in Poland or in Guernsey; and
- (b) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;

"Authority" means the KNF or the Guernsey FSC;

"Guernsey" mean the Bailiwick of Guernsey;

"permitted onward recipient" means an agency or authority responsible for prosecuting, regulating or enforcing applicable laws, regulations and requirements falling within the areas of responsibility of the Authorities;

"enforcement matter" means a supervisory issue arising from an internal detection/vetting procedure or official administrative investigation regarding cases of: potential market manipulation, insider trading, any other market abuse or terrorist financing.

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

"Requested Authority" means the Authority to whom a request for assistance is made under this MoU.

"Requesting Authority" means the Authority making a request for assistance under this MoU.

the singular includes the plural and vice versa.

## Purpose and Principles

- 2. The purpose of this MoU is to establish a basis for bilateral co-operation, including the exchange of information and mutual assistance in enforcement matters.
- 3. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, Poland or Guernsey. This MoU does not create any enforceable rights. This MoU does not affect any arrangements under multilateral

MoUs signed by any of the parties, nor the rules of procedure of international bodies in which any of the parties participates.

4. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements. The Authorities represent that no domestic secrecy or blocking laws or regulations should prevent the collection or provision of information set forth in clause 6 to the Requesting Authority.

### **Provision of Unsolicited Information**

5. The Authorities shall endeavour to provide to the other Authority any pieces of information that should be material, or arrange for such information to be provided, on a voluntary basis even though no request has been made.

### **Requests for Assistance**

6. If a request for assistance is made, each Authority will use its best endeavours and efforts to provide assistance to the other, subject to its laws and overall policy. Assistance may include, for example:
  - (a) disclosing 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 any issues of mutual interest;
  - (d) in cases where the applicable laws and/or regulations provide the Requested Authority with the necessary powers: obtaining specified information and documents from persons, questioning or taking testimony of persons designated by the Requesting Authority or conducting inspections or examinations of supervised entities;
  - (e) in cases where the applicable laws and/or regulations provide the Requested Authority with the necessary powers: permitting the representatives of the Requesting Authority to participate in the process of enquiry or investigation conducted by or on behalf of the Requested Authority.

### **Procedure for Requests**

7. Requests for the provision of information or other assistance will be made in writing. To facilitate assistance, the Requesting Authority should specify in any written request:
  - (a) a description of 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) any permitted onward recipient, to which disclosure of information provided to the Requesting Authority by the Requested Authority is likely to be necessary and explanation of the purpose such disclosure would serve in relation to any onward disclosure;
- (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 1; and
- (f) any other matters specified by the Requested Authority and by the applicable laws, regulations and requirements in relation to the Requested Authority.

## Assessing Requests

8. Each request for assistance 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 provide the reasons for not granting the assistance and consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.
9. 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 request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the Requested Authority;
  - (c) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the Requested Authority's functions;
  - (d) 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;
  - (e) 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 1;
  - (f) 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 standards); and
  - (g) whether complying with the request may otherwise be prejudicial to the performance by the Requested Authority of its functions.
10. The authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in clause 9 in the discretion of the Requested Authority.

## Contact Points

11. Requests for assistance shall be made in writing and addressed to the contact person of the Requested Authority listed in Appendix 2.

## Further Provisions

12. The further provisions set out in:
  - (a) Appendix 1 will apply in relation to possible enforcement matters;
  - (b) any other Appendices covering specific areas of financial services or specific issues, as agreed in writing by the Authorities, will apply.

## Costs

13. If the cost of fulfilling a request is likely to be substantial, 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.

## Confidentiality

14. Each Authority will keep confidential: requests made under this MoU, the contents of such requests, any matters arising under this MoU, including consultations, 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.
15. An Authority that receives non-public information under this MoU will only disclose that information in accordance with disclosure permitted under its applicable laws, regulations and requirements. The Requested Authority's consent will be sought in good time before any voluntary disclosure by a Requesting Authority of information supplied under this MoU to another person. The Requesting Authority will comply with any restrictions set by the Requested Authority on the use of information that are agreed when the information is provided.
16. In the event that a legally enforceable demand for disclosure of information supplied under this MoU is anticipated, the Requesting Authority will notify the Requested Authority of the possibility of disclosure. If there is a legally enforceable demand for information supplied under this MoU, the Authority receiving the demand will notify the Authority that supplied the information of the demand, unless this is not practicable for reasons of urgency. The Authority receiving the demand will use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available.

## Consultation

17. 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.

18. Both Authorities will consult in matters relating to any difficulties that may arise in relation to specific requests made pursuant to this MoU (e.g. where a request may be denied, or if it appears that responding to a request will involve a substantial cost).
19. 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 Authority and the Requested Authority, the Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

### Commencement and Termination


20. This MoU will take effect when both Authorities have signed it and will continue to have effect until terminated by either Authority giving 30 days' advance written notice to the other Authority. It may be amended by agreement in writing.
21. In the event of the termination of this MoU, information obtained under this MoU will continue to be treated confidentially in the manner prescribed in clauses 14 to 16.

### Publication

22. Either, or both, Authorities may make a copy of this MoU, or the text of it, publicly available.

### Executed by the Parties:

For the KNF



Andrzej Jakubiak  
Chairman

Date: 17.01.12

For the GUERNSEY ESC



JN van Leuven, Director General  
Director General

Date:



## Appendix 1: 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 further 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.
  - (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, and who is the subject-matter of the request.

### Requests to Sit in

3. If, following a request from the Requesting Authority concerning enforcement matters only, 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 conform to any published guidance for the making of such requests issued by the Requested Authority.

## **Other supervisory procedures**

4. If the Authorities agree to take part in any other supervisory activity, 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 process, and allocation of responsibilities.

## **Rights of persons preserved**

5. 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.

## Appendix 2: Contact persons

### For the Guernsey Financial Services Commission

Mr Nik van Leuven  
Director General  
Guernsey Financial Services Commission  
tel. +44 1481 712706  
fax. +44 1481 712010  
email: [info@gfsc.gg](mailto:info@gfsc.gg)

### For the KNF - Polish Financial Supervision Authority

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