

MEMORANDUM OF UNDERSTANDING (MoU)

Between

Isle of Man Gambling Supervision Commission

And

Financial Services Authority of Seychelles

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Overview

In the light of the growing globalisation of gambling services, the Isle of Man Gambling Supervision Commission (“GSC”) and the Financial Services Authority of Seychelles (“FSA”) (collectively, the “Authorities”) hereby enter into this Memorandum of Understanding (“MoU”) to provide a formal basis for cooperation and coordination, including arrangements for the acquisition, exchange, handling, protection and use of information and, where appropriate, operational co-operation with respect to the activities of companies or persons engaged in the provision or use of gambling facilities of relevance to either party.

The GSC and the FSA express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective responsibilities and functions.

The FSA

The Seychelles Gambling Act establishes the Financial Services Authority as the regulator of casino, slot machines and interactive gambling business in the Seychelles. It does so in the public interest and through its statutory licensing objective to:

- take all reasonable steps to ensure that the Act and any regulations made under the Act are complied with;
- license, supervise and regulate gambling business conducted under this Act;
- take all reasonable steps to safeguard and protect the public interest by suppressing any illegal, dishonorable and improper practices in the gambling industry;
- to take such measures as it considers appropriate to develop the gambling industry in Seychelles and compliance to international standards and best practices.

The GSC

The GSC is the Isle of Man's national gaming regulator established by an Act of Tynwald for the licensing and supervision of all forms of gambling conducted in the Island with the exception of the National Lottery. The GSC's mandate, through its regulatory objectives is to:

- ensuring that gambling is conducted in a fair and open way;
- protecting children and other vulnerable persons from being harmed or exploited by gambling; and
- preventing gambling from being —
 - (i) a source of crime or disorder,
 - (ii) associated with crime or disorder, or
 - (iii) used to support crime.

Clause 1 – Object of the Agreement

1. The purpose of this MoU is to document formally the basis for co-operation, including the exchange of information and investigative assistance.
2. This MoU does not modify or supersede any laws or regulatory requirements applying to the Seychelles. This MoU sets forth a statement of intent and accordingly does not create any enforceable rights, legally binding obligations or agreement. Clause 11 shall govern the disclosure of information in accordance with this agreement.
3. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

Clause 2 – Definitions

4. For the purpose of this Agreement:
“Authority” means:
 - a. The Isle of Man Gambling Supervision Commission;
 - b. The Financial Services Authority of Seychelles;
5. “Requested Authority” means: the Authority asked for information pursuant to this Agreement;
6. “Requesting Authority” means: the Authority requesting information pursuant to this Agreement;
7. “Laws and regulations” means: all the standards applicable in the Isle of Man and Seychelles;
8. “Operator” means: any licensed individual or corporate entity offering gambling services under the relevant laws;
9. “Player” means: any person receiving an invitation to participate in any gambling activity.

Clause 3 – Scope of mutual assistance

10. The Requested Authority shall provide the Requesting Authority with access to information it holds and, where appropriate, implements any means and powers enabling it to provide the information requested, without any additional cost to players or operators.
11. The information provided is intended to assist inspections effected by the authorities with regard to operators. Such inspections particularly concern operators’ compliance with their obligations. The information is also intended to assist administrative investigations into suspicious betting activity, fraud or criminal activity.
12. The information is provided pursuant to laws and regulations governing the Authorities’ activities.
13. Where access to the information requested can only be authorised by the courts, the Requested Authority will consider applying to the competent legal authority for authorisation to access the information required. When communication of such information is not possible to achieve within the frame of this MoU, the Requesting Authority will consider using the available tools of international police or judicial cooperation.

Clause 4 – Requests for mutual assistance

14. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to its laws and overall policy. Assistance may include for example:
- 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 designated by the Requesting Authority;
 - e. questioning or taking testimony of persons designated by the Requesting Authority;
 - f. facilitating the conduct of inspections or examinations of gambling providers, facilities or equipment; and
 - g. permitting the representatives of the Requesting Authority to participate in the conduct of enquiries made by or on behalf of the Requesting Authority pursuant to paragraphs (e) – (f) above.

Clause 5 – Provision of Unsolicited Information

15. These arrangements allow the provision of information without request to the extent permitted by the Authorities' respective laws and procedures, which will in the opinion of the Authority providing the unsolicited information, assist in the discharge of the functions of the Authority receiving the unsolicited information under the Act.

Clause 6 – Legal gateways

16. The legal gateways are listed in Appendix 3.

Clause 7 – Mutual assistance procedure

17. Requests for the provision of information or other assistance will normally be made in writing or made orally if the request is time sensitive by the Requesting Authority and, unless otherwise agreed, confirmed in writing within 14 (fourteen working) days.
18. To facilitate assistance, the Requesting Authority should specify the following:
- a. the information or other assistance requested (identity of persons, specific questions to be asked etc.);
 - b. if information is provided by the Requested 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. how the information is likely to be used, including details of any likely onward disclosure by the Requesting Authority, 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 Appendix 2;

- f. any other matters specified by the Requested Authority and by the applicable laws, regulations and requirements in relation to the Requested Authority;
- g. if the matter is urgent; and
- h. desired time for reply.

Clause 8 – Purpose of information provided

- 19. The information provided may only be used for the purposes stated in the initial request.
- 20. The Requesting Authority may request, in writing, leave to use the information provided for a purpose not stated in the initial request. Such request must be in writing and explained.

Clause 9 – Assessing requests

- 21. 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 and pursuant to any applicable laws or regulations. In any case where the request cannot be fulfilled in part or in 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.
- 22. In deciding whether and to what extent to fulfil a request, the Requested Authority may take into account:
 - a. Whether the request for assistance conforms with this MoU;
 - b. Whether compliance with the request for assistance would be so burdensome as to disrupt the proper performance of the Requested Authority's regulatory functions or is otherwise prejudicial to the performance of such functions;
 - c. Whether it would be detrimental or otherwise contrary to the public interest or wider interests of the Requested Authority's jurisdiction to agree to the request for assistance;
 - d. Any other matters specified by the laws, regulations and requirements of the Requested Authority's jurisdiction (in particular those relating to confidentiality, professional secrecy, data protection, privacy and procedural fairness).

Clause 10 – Possible grounds for refusal

- 23. The assistance provided for in this Agreement may be refused where:
 - a. the request from the Requesting Authority is such as to infringe the sovereignty and public policy of the Requested Authority's state;
 - b. disclosure of the information requested may interfere with a procedure initiated by the Requested Authority against an operator;
 - c. the request from the Requesting Authority is likely to infringe the rules on the processing of personal data;
 - d. disclosure will be in accordance with any applicable law or regulation.

Clause 11 – Confidentiality of requests and information provided

- 24. The Requesting Authority shall not disclose any information provided by the Requested Authority pursuant to this Agreement to any third party.

25. The Requesting Authority may request the Requested Authority, in writing and with an explanation, to waive such confidentiality. The reply shall be in writing. The Requested Authority may subject such disclosure to conditions and such disclosure must comply with any laws and regulations applicable in the State of each Requested Authority.
26. Should it be obliged, pursuant to laws and regulations, to provide a third party with the information supplied to it under this Agreement, the Requesting Authority shall immediately inform the Requested Authority thereof. The Requested Authority shall use the appropriate means at its disposal to protect the confidentiality of the information concerned.
27. No other person, entity or group may avail itself of the provisions of the Agreement.
28. Where information provided may be used as evidence in legal proceedings it may be necessary to proceed as per the Mutual Judicial Assistance Protocol or any other international tool of police or judicial cooperation.

Clause 12 – Joint Investigation

29. The provisions of the present clause must be read according to the investigation powers given to the investigators within the legal and regulatory frame of each Authority. In this respect, the Authorities acknowledge being duly informed of the existing differences between the powers given to the FSA's inspectors and to the GSC's investigators.
30. 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.
31. 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.
32. 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.

Clause 13 – Cooperation between the staff of Authorities

33. The Authorities may organise working groups to facilitate the exchange of information between them, pursuant to the operating procedures referred to in Clause 7.
34. The Authorities will provide a list of contact points to which information or requests for information or assistance under this MoU should be directed. This person will be known as the Single Point of Contact (SPoC).
35. The Financial Services Authority SPoC: The Manager of the Gambling Supervision Section.
36. The Isle of Man Gambling Supervision Commission SPoC: Director of Licensing and Strategy.

Clause 14 – Relationship to other Instruments

37. This Agreement shall not derogate from any international instruments containing provisions on the subject matter of this Agreement, to which the States creating the Authorities are or may be parties.

Clause 15 – Costs

38. 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. If costs are to be incurred, these will be agreed between the Authorities in advance.

Clause 16 – Entry into force

39. The Agreement shall come into force on the date of signature.

Clause 17 – Term and termination of this Agreement

40. This Agreement will remain in force for an indeterminate period subject to paragraph 41.

41. This Agreement may be terminated at any time by any Authority giving thirty days notice to the other Authority of its intention to terminate the MoU. Termination shall be effected in writing. This Agreement shall continue to apply for thirty days after its termination. Requests for assistance made before its termination shall be complied with in accordance with this Agreement.

Clause 18 – Resolution of disputes

42. The application and interpretation of this Agreement shall not entail, for or against any Authority, rights or obligations giving rise to any form of judicial or extrajudicial action. All disputes must be resolved by consultation between the parties.

Clause 19 – Review of agreement

43. This agreement will be regularly reviewed by both parties working in conjunction. The next review date shall be two years from the date of signature of this MoU.

Clause 20 – Executed by the Parties

44. This agreement formalises the arrangements for joint operations, and the sharing of information between the Financial Services Authority and the Isle of Man Gambling Supervision Commission.

Signed by:

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Steve Brennan (Mr)
Chief Executive Officer
Isle of Man Gambling Supervision Commission

Date:.....13.04.16.....

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Jennifer Morel (Ms)
Chief Executive Officer
Financial Services Authority of Seychelles

Date:.....06.04.16.....

Appendix 1: Contact points

Isle of Man Gambling Supervision Commission

Address: Ground Floor, St. George's Court, Myrtle Street, Douglas, IM1 1ED

Name: [REDACTED] Director Licensing and Strategy

Telephone Number: [REDACTED]

Email: [REDACTED]

Financial Services Authority of Seychelles

Address: Bois de Rose Avenue, Roche Caiman, P.O Box 991, Mahe, Seychelles

Name: [REDACTED] Manager of the Gambling Supervision Section

Telephone Number: [REDACTED]

Email: [REDACTED]

Appendix 2: Further Procedures for Enforcement Matters

Further details to be contained in requests for assistance.

If a request for assistance as described in this MoU relates to an actual or possible enforcement action, the following further details will be contained in the request:

1. a description of the conduct or suspected conduct which gives rise to the request;
2. details of the applicable law, regulation or requirement to the administration of which the request is relevant;
3. the link between the specified rule or law and the regulatory functions of the Requesting Authority;
4. the relevance of the requested assistance to the specified rule or law; and
5. 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.

Appendix 3 – Legal gateways for the sharing of information

Financial Services Authority

1. The Seychelles Data Protection Act 2003 has been enacted but has not yet come into force.
2. The FSA as the regulator for casino, gaming machine and interactive gambling in Seychelles may share information with the GSC in accordance with the relevant provisions of the Financial Services Authority Act.
3. S. 17 of the FSA Act imposes on the Authority a duty to take such steps as it considers appropriate to cooperate with foreign regulatory authorities.
4. S. 18 of the FSA Act allows the FSA to provide assistance to foreign regulatory authorities on a written request of such an authority. This assistance can be in the form of:
 - requesting specified information or documents from any person in accordance with s16
 - Appointment of competent persons or examiners to investigate any matter
 - Disclosure of information or provision of documentation to the foreign regulatory authority.
5. S. 18(2) of the FSA Act permits the sharing of information only if it is satisfied that the request is reasonable required by the foreign regulatory authority for the purposes of its regulatory functions.
6. S.18 (4) of the FSA makes provision for certain grounds upon which the Authority may decide to provide assistance to a foreign regulatory authority.
7. S.21(1) of the FSA makes provision for disclosure of information which is not restricted information under the Act:
 - required or permitted by a court of competent jurisdiction in Seychelles;
 - required or permitted by this act or any other Seychelles law;
 - to any person for the purpose of discharging any function or exercising any power under this Act or any financial services legislation, in either case whether the function or power is of the person disclosing the information of the Authority or the Board;
 - to a foreign regulatory authority under section 18;
 - in the course of criminal or disciplinary proceedings.

Isle of Man Gambling Supervision Commission

1. Information may be shared between the GSC and the FSA by virtue of :
 - S.25 and S.35 of the Data Protection Act 2002
 - S.7 of the Gambling Supervision Act 2010
 - Case law
2. S.25 (3) of the Data Protection Act 2002 permits the sharing of information between parties for the following purposes:
 - The prevention and detection of crime
 - The apprehension or prosecution of offenders
 - The assessment or collection of any tax or duty or any impositions of a similar nature
3. S.31 (1) of Data Protection Act 2002 permits the sharing of information where another Act, law or court order requires it.
4. With reference to S.31 (1) to the Data Protection Act 2002, S.7 of the Gambling Supervision Act 2010 allows for the limited exchange of information between the GSC and other parties subject to restrictions detailed in schedule 2.
5. However the legal gateway provided by S.30 does not override restrictions established by other Acts and the further use or sharing of information provided by another body may be prohibited.
6. This agreement is pursuant to the Data Protection Act 2002, including the 8th principle:

“Personal data shall not be transferred to a country or territory outside the Isle of Man unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.”

Appendix 4 – The Information sharing process

The Financial Services Authority is the regulator of the casino, gambling machine and interactive gambling business in Seychelles and may exchange information to foreign regulatory authorities in accordance with the Financial Services Authority Act 2013. The Isle of Man Gambling Supervision Commission is a data controller under the Data Protection Act 2002 and when processing or sharing personal data, the GSC is required to do so in accordance with the requirements of this Act.

The following points apply to the manner in which information will be shared and stored by each party.

1. This process does not cover information that is already in the public domain.
2. Procedures for notifying the other party of the transmission and receipt of sensitive information shall ensure all exchanges of information are traceable.
3. Any specific technical and customary standards for the packaging, transmission, recording and reading of exchanged information shall be explicitly stated; otherwise standard commercial solutions shall be applied.
4. Where other protective marking systems are used, the relevant parties shall agree common marking and handling guidelines.
5. Shared information must not be further disclosed to any other party or used for a purpose alternative to any one stated without the consent of the originating party, unless required to do so by law.
6. Both parties will ensure that, to the best of their knowledge, shared information is as accurate, up to date and adequate for the purpose disclosed and where one party discovers this not to be the case, they will inform the originating party of this.
7. Exceptions to this process shall only be permitted where they are agreed to by both parties, there is clear requirement (e.g. time-sensitive operations) or harm or injury could occur otherwise.

Information storage

8. Both parties agree that shared information should only be retained for the period necessary to achieve the objectives of the disclosure.
9. Both parties will ensure that received information is attributable and traceable to the other by marking or referencing.
10. Both parties shall apply security controls to all processing of shared information including transmission, storage and destruction and that personal data shall be protected
11. Both parties will ensure that staff handling Protectively Marked material are appropriately trained and vetted.
12. Both parties will keep disclosure log recording shared information.