

MEMORANDUM
OF
UNDERSTANDING

Between

Florida Office of Insurance Regulation (FLOIR)

And

United Kingdom Financial Services Authority (FSA)

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Memorandum of Understanding Concerning Cooperation, Coordination, Consultation and Exchange of Information Related to Persons or Entities Engaged in the Business of Insurance

Overview

In view of the globalization of the world's insurance markets, and pursuant to Sections 624.307 and 624.319, Florida Statutes, the Florida Office of Insurance Regulation ("FLOIR") and the United Kingdom Financial Services Authority ("FSA") (collectively, the "Authorities") hereby enter into this Memorandum of Understanding ("MoU") to provide a formal basis for cooperation and coordination, including for the exchange, handling, protection and return of information in their possession and, where appropriate, investigative assistance with respect to companies and persons engaged in the business of insurance. The FLOIR and the FSA express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates and functions. The FLOIR and the FSA believe such co-operation will enable them to more effectively perform their functions.

The FLOIR regulates all company related insurance business transacted in the State of Florida and is the primary regulator for insurance entities domiciled therein. In its capacity as regulator, the FLOIR administers, interprets and enforces the provisions of Florida's insurance laws and regulations, and is vested and charged with all rights, powers and duties as expressed or reasonably implied by the Florida Insurance Code.

The FSA regulates insurance business transacted in the United Kingdom pursuant to its mandate to administer and enforce the Financial Services and Markets Act 2000 ("FSMA") and is a governmental entity for the purposes of Section 624.319, Florida Statutes. The FSMA provides, amongst other things, that no person may carry on a regulated activity in the United Kingdom unless authorized or exempt. Insurance was designated a regulated activity by Her Majesty's Treasury under the FSMA Regulated Activities Order 2001/544.

Article I: Definitions

For purposes of this MoU, unless the context states otherwise:

- (a) "Administering" an applicable law, regulation or requirement includes enforcing the same.
- (b) Applicable laws, regulations, and requirements" means any law, regulation, or requirement applicable in the State of Florida and/or in the United Kingdom, and where the context permits, includes:
 - (i) Relevant Legislation that has not yet been transposed into the United Kingdom's domestic law;
 - (ii) Any law, regulation or requirement applicable in the State of Florida or United Kingdom; and
 - (iii) Any rule, direction, requirement, guidance or policy made or given by, or to be taken into account
- (c) "Authority" or "Authorities" means the FLOIR and/or the FSA.
- (d) "Confidential Information" means:
 - (i) Any documents or records deemed confidential by Florida law, regulation, requirements or privilege, including, but not limited to, draft examination reports; examination work papers; analyses of financial condition; reports of fraudulent activity; records regarding holding company transactions; and trade secrets or records maintained for the regulation of commercial enterprise, which if disclosed would cause substantial injury to the competitive position of the subject enterprise. Confidential information also includes records the disclosure of which would constitute unwarranted invasion of personal privacy, would impair present or imminent contract awards or collective bargaining negotiations, or would endanger the life or safety of any person: records compiled for law enforcement purposes; certain inter-agency or intra-agency correspondence; computer access codes; and examination questions or answers requested prior to the final administration of such questions.
 - (ii) Any documents or records deemed confidential by United Kingdom law, regulation or privilege including, but not limited to information which relates to the business or other affairs of any person, received by the FSA for the purpose of, or in the discharge of, any functions of the FSA and is not otherwise prevented from being confidential information.
- (e) "Emergency Situation" means any situation or event that could materially affect or impair the financial or operational condition of a Regulated Entity or Person or substantially affect the public interest of the jurisdiction of either Authority and that accordingly must be handled in an expedited manner.
- (f) "FLOIR" means Florida Office of Insurance Regulation.
- (g) "FSA" means the United Kingdom Financial Services Authority .
- (h) "Hosting Authority" means the Authority in whose jurisdiction the On-Site

Inspection will be performed.

- (i) "Inspecting Authority" means the Authority performing the On-Site Inspection.
- (j) "On-Site Inspection" means any routine or regulatory inspection or examination of the books, records or premises of a Regulated or Related Entity or Person.
- (k) "Person" means a natural person, legal entity, partnership or unincorporated association.
- (l) "Regulated Entity" or "Regulated Person" means a company or person engaged in insurance activities subject to the supervision of the FLOIR and/or the FSA.
- (m) "Related Entity or Person" means a company or person engaged in insurance activities, or legal entities or sub-groups of a Regulated Entity or Person, including affiliates, branches or subsidiaries, regulated by the FLOIR and/or the FSA.
- (n) "Requesting Authority" means the Authority seeking assistance/information.
- (o) "Responding Authority" means the Authority responding to a request for assistance/information.

Article II: Purpose and Objective of MoU

The purpose of this MoU is to establish a formal basis for consultation, cooperation and coordination between the FSA and the FLOIR, and to provide for the exchange of information relevant to each Authority's supervisory, regulatory and examination responsibilities.

Article III: Requests for Assistance

(a) Requests for assistance include, among other things, requests to confirm or verify information; requests to obtain information about a specified person or entity; requests for discussion of issues of mutual interest between the Authorities; requests to question or take testimony of persons designated by the Requesting Authority; and requests to conduct inspections or examinations of Regulated/Related Entities or Persons. Requests for assistance that include requests for Confidential Information shall follow the procedure set forth in this MoU. If a request for assistance is made under this agreement, each Authority shall use reasonable efforts to assist the other, subject to its laws and overall policy.

(b) This MoU does not create any legally binding obligations, confer any rights, modify, or supersede any domestic laws or regulatory requirements in force in, or applying to, the State of Florida or the United Kingdom.

(c) This MoU does not confer upon any person the right or ability, directly or indirectly to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this MoU. This MoU is not intended to affect any arrangements under any other MoUs in existence to which either of the Authorities is a party.

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

(e) The Authorities shall consider and promptly respond to all requests for assistance regarding: (i) the safety, soundness, or financial condition of a Regulated Entity or Person, or (ii) the insurance activities of a Regulated Entity or Person. Where Confidential Information is involved, the decision to share this information is at the sole discretion of the Responding Authority; however, the Responding Authority shall use reasonable efforts to obtain and share such information.

Article IV: Procedure for Making/Responding to Requests for Assistance

(a) To the extent possible, all requests for assistance shall be in writing and, if made orally, the provisions of Article V, Paragraph (d), below must be followed. Requests for assistance must be directed to the appropriate appointed contact person(s) identified in **Exhibit A**, and should include the following:

- (i) A description of the information, confirmation or verification sought by the Requesting Authority, identifying relevant persons and specific questions to be asked;
- (ii) A general description of the matter that is the subject of the request and the purpose for which the information is sought;

iii) The desired time period for reply, and where appropriate, an explanation of the urgency thereof;

(iv) A description of other persons or entities, if any, to whom further disclosure of information provided to the Requesting Authority would be necessary and the purpose such disclosure would serve. It is a condition of information provided by the FSA that it may only be used for the purpose of enabling or assisting the Requesting Authority to discharge its functions as a regulatory, supervisory, examination and enforcement authority.

(b) Each Responding Authority shall use reasonable efforts to assess, on a case-by-case basis, whether any Confidential Information that has been requested can be provided under the terms of this MoU. Where the request cannot be fulfilled in whole or in part, the Responding Authority shall consider whether it, or any other regulatory authority in its jurisdiction, has the ability to render assistance to the Requesting Authority and, to the extent possible, shall use reasonable efforts to facilitate such assistance.

(c) In deciding whether and to what extent to fulfill a request, the Responding Authority may take into account:

(i) Whether the request for assistance conforms with this MoU;

(ii) Whether the request for assistance involves the administration of a law, regulation or requirement that has no close parallel in the jurisdiction of the Responding Authority;

(iii) Whether compliance with the request for assistance would be so burdensome as to disrupt the proper performance of the Responding Authority's regulatory functions:

(iv) Whether it would be detrimental or otherwise contrary to the public interest or the essential national interest of the Responding Authority's jurisdiction to provide the information requested; and

(v) Any other matters specified by the laws, regulations and requirements of the Responding Authority's jurisdiction (in particular those relating to confidentiality, professional secrecy, data protection, privacy and procedural fairness).

(vi) Whether complying with the request may otherwise be prejudicial to the performance by the Responding Authority of its functions.

(vii) Whether the request for assistance is for the purpose of actual or possible enforcement action.

Article V: Confidentiality

(a) The Authorities may voluntarily and in their sole discretion provide information, including Confidential Information, without having received a request for assistance.

(b) In responding to any request for assistance, the Responding Authority shall identify any information that is provided pursuant to this MoU that constitutes Confidential Information.

(c) The Authorities agree to request Confidential Information only if it is relevant to their lawful supervision or examination of a Regulated Entity or Person, and shall use the Confidential Information they receive under this MoU only for those purposes.

(d) To the extent possible, all requests for Confidential Information shall be made in writing and addressed to the appropriate appointed contact person(s) identified in **Exhibit A**. Where, due to an Emergency Situation or exceptional circumstances, an oral request is necessary, such request shall thereafter be confirmed by the Requesting Authority in writing within ten (10) business days. Requests for Confidential Information made at in person meetings between the Authorities do not require a subsequent written confirmation if such oral requests will be noted in the minutes of the meetings between the Authorities.

(e) In assessing a request for assistance or information, the Responding Authority may rely on the confirmation of equivalent confidentiality protections or other certification or confirmation by the Requesting Authority of its ability and authority to maintain the protected nature of Confidential Information. The Responding Authority may also rely on other relevant issues, such as its own knowledge of the Requesting Authority's practices and procedures.

(f) The FLOIR states that pursuant to Sections 624.307 and 624.319, Florida Statutes, it has the legal authority necessary to enter into this MoU and to protect from disclosure, and otherwise preserve, the confidential or privileged nature of any Confidential Information that it requests and receives pursuant to this MoU. A copy of the law establishing such authority is attached hereto as **Exhibit B**.

(g) The FSA states that the Financial Services and Markets Act 2000 ("FSMA") authorizes it to enter into this MoU and to protect from disclosure, and otherwise preserve, the confidential or privileged nature of any Confidential Information that it requests and receives pursuant to this MoU. The FSA regulates insurance business transacted in the United Kingdom pursuant to its mandate to administer and enforce the Financial Services and Markets Act 2000 ("FSMA") and is a governmental entity for the purposes of Section 624.319, Florida Statutes.

A copy of the law establishing such authority is attached hereto as **Exhibit B**.

(h) All Responding Authority Confidential Information belongs to, and shall remain the property of the Responding Authority. The Requesting Authority shall, in accordance with applicable laws, regulations and pursuant to the terms of this MoU, take all actions reasonably necessary to preserve, protect, and maintain the confidentiality of such Confidential Information and any privileges associated therewith.

(i) The Requesting Authority shall ensure that all persons who work for it, as well as any auditors, experts or agents instructed by it, are bound by a confidentiality obligation at least equivalent to that which the Requesting Authority is subject to. To the extent that the Requesting Authority's regime does not explicitly bind former employees, the Requesting Authority shall, where appropriate, consider legal action under relevant law for breach of fiduciary duty against any former employee who divulges confidential information obtained during his or her term of employment.

(j) The Requesting Authority may provide Confidential Information received under this MOU to other state, federal or international regulatory or law enforcement officials who have authority over the Regulated Entity that is the subject of the Confidential Information, provided that (a) information is provided solely to assist the Requesting Authority in the exercise of its own functions; (b) such disclosure is made in accordance with all applicable laws, regulations and

requirements; (c) the Requesting Authority obtains the consent of the Responding Authority prior to such disclosure; (d) the Requesting Authority discloses to the Responding Authority the identity of each recipient with whom the Confidential Information will be shared; and (e) confirms that each recipient agrees to, and has the legal authority to, maintain a level of confidentiality at least equivalent to that which the Requesting Authority is subject to including, where relevant, limitations imposed upon it by the Responding Authority.

(k) Where there is a subpoena or other legally enforceable demand for information supplied under this MoU, the Requesting Authority shall notify the Responding Authority. The Requesting Authority shall 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, and shall afford the Responding Authority the opportunity to take whatever action it deems appropriate to preserve, protect and maintain the confidential nature of the information provided, including consenting to any application by the Responding Authority to intervene in any action to preserve the confidentiality of Responding Authority Confidential Information.

(l) Each Authority will attach a copy of the confidentiality provisions applicable in its country to this MoU as **Exhibit B**. The Authorities will inform each other in due course if the confidentiality regime is significantly affected by a change of law or a court decision.

Article VI: Procedures for Enforcement Matters

Details to be Contained in Requests for Assistance

If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further details shall 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 law, regulation or requirement, and the regulatory functions of the Requesting Authority;
- (d) the relevance of the requested assistance to the specified law, regulation or requirement; and
- (e) whether it is desired that, to the extent permitted by the laws applying to the Responding 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.

Possible Ground for Denial of Requests for Assistance

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 Responding Authority in determining whether it would be reasonable to fulfill the request in whole or in part, that is, whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against a person who in the reasonable opinion of the Responding Authority has already been the subject of appropriate and relevant disciplinary or other enforcement action or has otherwise been appropriately dealt with.

Requests to Sit in

If, following a request for assistance from the Requesting Authority, the Responding Authority conducts an interview of any Regulated or Related Entity or Person, the Responding 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 Responding Authority . Requests for such assistance should conform to any published guidance for the making of such requests issued by the Responding Authority.

Joint Investigations

The Authorities acknowledge that, subject to all applicable secrecy and confidentiality protections, 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.

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 joint investigation.

If the Authorities agree to take part in a joint investigation, a written initial action plan will be prepared setting forth, among other things, the objectives, expected duration, funding, publicity and accountability arrangements, management and allocation of responsibilities for the joint investigation.

Suggestions to FLOIR for a joint investigation should be made, through the Office of the Insurance Commissioner, Kevin M. McCarty, or his successor, at 200 E. Gaines Street, Tallahassee, Florida, 32399. Suggestions to the FSA should be made to the Director, Enforcement.

Rights of Persons Preserved

Any person or entity providing testimony, information or documents as a result of a request for assistance made under this MoU will be entitled to all applicable rights and protections of the laws of the jurisdiction of the Responding Authority. Where such entity or person asserts other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the Requesting Authority, the Authorities will consult with each other to determine the most appropriate way to proceed.

Article VII: On-Site Inspections

The FLOIR and the FSA recognize that cooperation is particularly useful in assisting each other in carrying out On-Site Inspections of Regulated or Related Entities and Persons in both jurisdictions where that would be necessary for either FLOIR or the FSA (as the case may be) to carry out their relevant functions. To that end, the Authorities agree to comply with the following procedures prior to conducting On-Site Inspections:

- (i) The Inspecting Authority shall notify the Host Authority of: the Inspecting Authority's intent to conduct an On-Site Inspection by itself or by an authorized third party; the time frame for the inspection; and the scope of such inspection. Where practicable, the Inspecting Authority shall notify the Host Authority of the inspection at least one week prior to informing the Regulated or Related Entity or Person that it will be the subject of the On-Site Inspection.
- (ii) The Host Authority may, in its discretion, accompany the Inspecting Authority to, and assist the Inspecting Authority with, any On-Site Inspections.
- (iii) If the On-Site inspection is for the purpose of actual or possible enforcement action, the provisions set forth in Article VI above shall apply

Article VIII: Costs

Where the cost of fulfilling a request is likely to be substantial, the Responding Authority may, on a case-by-case basis, require the Requesting Authority to bear some or all of such costs.

Article IX: Consultation Between the Authorities

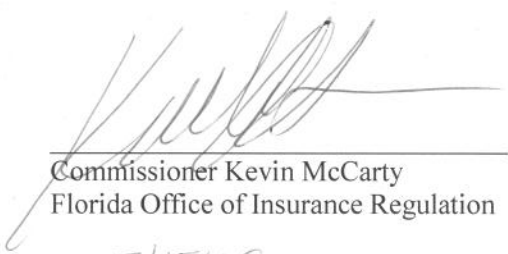
- (a) The Authorities shall keep the operation of this MoU under review and shall consult with each other as necessary with a view to improving its operation and resolving any concerns that have arisen out of its operation.
- (b) Where a specific conduct outlined in a request for assistance constitutes a breach of a law, regulation or requirement in the jurisdiction of both Authorities, the Authorities shall consult with each other to determine the most appropriate means for each Authority to provide the assistance requested.

Article X: Commencement and Termination of the MoU

- (a) This MoU shall take effect when both Authorities have signed it and shall continue to have effect until terminated by either Authority upon thirty (30) days written notice. Termination shall not in any way affect the rights or obligations of either Authority with respect to Confidential Information previously provided under this MoU or any privileges associated with such information.
- (b) This MoU supersedes and replaces all other existing agreements or representations, either oral or written, between the parties to this MoU regarding the sharing of information. No waiver, alteration or modification of the provisions of this MoU shall be binding unless subsequently made in writing and signed by duly authorized representatives of the Authorities.
- (c) This MoU may be amended by written agreement of FLOIR and FSA.

Executed by the Parties:


**For the Florida Office of Insurance
Regulation**



Commissioner Kevin McCarty
Florida Office of Insurance Regulation

Date 7/15/09

**For the United Kingdom Financial
Services Authority**



Ken Hogg, Insurance Director
FSA, UK

Date 10/7/09

EXHIBIT A

Contact Persons for:

**Florida Office of Insurance Regulation
Larson Building, Sixth Floor
200 East Gaines Street
Tallahassee, Florida 32399 -4206**

Name: Ms. Susan Dawson
Title: Deputy General Counsel
Telephone: (850) 413-4195
Fax: (850) 413-7460
E mail: Susan.Dawson@Floir.com
<http://www.floir.com>

OR

Name: Ray Spudeck, Ph.D
Title: Chief Economist, Florida Office of Insurance Regulation
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Contact Persons for:

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OR

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Title: Manager, International Insurance Issues
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Fax: +44 20 7066 9501
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EXHIBIT B

Excerpt from Florida Statutes section 624.319:

(b) 1. For purposes of this paragraph, “work papers” means the records of the procedures followed, the tests performed, the information obtained and the conclusions reached in an examination or investigation performed under this section or ss. 624.316, 624.3161, 624.317, and 624.318. Work papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained in the course of such examination or investigation.

2. a. Work papers held by the department or office are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the examination report is filed or until the investigation is completed or ceases to be active.

b. Information received from another governmental entity or the National Association of Insurance Commissioners, which is confidential or exempt when held by that entity, for use by the department or office in the performance of its examination or investigation duties pursuant to this section or ss. 624.316, 624.3161, 624.317, and 624.318 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. This exemption applies to work papers and such information held by the department or office before, on, or after the effective date of this exemption.

3. Confidential and exempt work papers and information may be disclosed to:

a. Another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities; and

b. The National Association of Insurance Commissioners.

4. After an examination report is filed or an investigation is completed or ceases to be active, portions of work papers may remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if disclosure would:

a. Jeopardize the integrity of another active examination or investigation;

b. Impair the safety or financial soundness of the licensee, affiliated party, or insured;

c. Reveal personal financial, medical, or health information;

d. Reveal the identity of a confidential source;

e. Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual;

f. Reveal examination techniques or procedures; or

g. Reveal information that is confidential or exempt under sub-subparagraph 2.b.

(c) Lists of insurers or regulated companies are confidential and exempt from s. 119.07(1) if:

1. The financial solvency, condition, or soundness of such insurers or regulated companies is being monitored by the office;
2. The list is prepared to internally coordinate regulation by the office of the financial solvency, condition, or soundness of the insurers or regulated companies; and
3. The office determines that public inspection of such list could impair the financial solvency, condition, or soundness of such insurers or regulated companies.

Excerpt from Florida Statutes section 624.307:

(1) The department and office shall enforce the provisions of this code and shall execute the duties imposed upon them by this code, within the respective jurisdiction of each, as provided by law.

(2) The department shall have the powers and authority expressly conferred upon it by, or reasonably implied from, the provisions of this code. The office shall have the powers and authority expressly conferred upon it by, or reasonably implied from, the provisions of this code.

(3) The department or office may conduct such investigations of insurance matters, in addition to investigations expressly authorized, as it may deem proper to determine whether any person has violated any provision of this code within its respective regulatory jurisdiction or to secure information useful in the lawful administration of any such provision...

(5) The department and office shall each have such additional powers and duties as may be provided by other laws of this state.

United Kingdom Confidentiality Provisions

Appendix –

Extract from FSMA (Financial Services and Markets Act 2000)

S 348

- (1) Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of
 - (a) the person from whom the primary recipient obtained the information; and
 - (b) if different, the person to whom it relates.

- (2) In this Part “confidential information” means information which –
 - (a) relates to the business or other affairs of any person;
 - (b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of Authority, the competent authority for the purposes of Part VI or the Secretary of State under any provision made by or under this Act; and
 - (c) is not prevented from being confidential information by subsection (4).

- (3) It is immaterial for the purposes of subsection (2) whether or not the information was received –
 - (a) by virtue of a requirement to provide it imposed by or under this Act;
 - (b) for other purposes as well as purposes mentioned in that subsection.

- (4) Information is not confidential information if-
 - (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section; or
 - (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.

- (5) Each of the following is a primary recipient for the purposes of this Part –
 - (a) the Authority;
 - (b) any person exercising functions conferred by Part VI on the competent authority;
 - (c) the Secretary of State;
 - (d) a person appointed to make a report under section 166;

- (e) any person who is or has been employed by a person mentioned in paragraphs (a) to (c);
 - (f) any auditor or expert instructed by a person mentioned in those paragraphs.
- (6) In subsection (5) (f) “expert” includes –
- (a) a competent person appointed by the competent authority under section 97;
 - (b) a competent person appointed by the Authority or the Secretary of State to conduct an investigation under Part XI;
 - (c) any body or person appointed under paragraph 6 of Schedule 1 to perform a function on behalf of the Authority.
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S 349

- (1) Section 348 does not prevent a disclosure of confidential information which is-
- (a) made for the purpose of facilitating the carrying out of a public function; and
 - (b) permitted by regulations made by the Treasury under this section.
- (2) The regulations may, in particular, make provision permitting the disclosure of confidential information or of confidential information of a prescribed kind –
- (a) by prescribed recipients, or recipients of a prescribed description, to any person for the purpose of enabling or assisting the recipient to discharge prescribed public functions;
 - (b) by prescribed recipients, or recipients of a prescribed description, to prescribed persons, or persons of prescribed descriptions, for the purpose of enabling or assisting those persons to discharge prescribed public functions;
 - (c) by the Authority to the Treasury or the Secretary of State for any purpose;
 - (d) by any recipient if the disclosure is with a view to or in connection with prescribed proceedings.
- (3) The regulations may also include provision-
- (a) making any permission to disclose confidential information subject to conditions (which may relate to the obtaining of consents or any other matter);
 - (b) restricting the uses to which confidential information disclosed under the regulations may be put.
- (4) In relation to confidential information, each of the following is a “recipient” –
- (a) a primary recipient;
 - (b) a person obtaining the information directly or indirectly from a primary recipient.
- (5) “Public functions” includes –
- (a) functions conferred by or in accordance with any provision contained in any enactment or subordinate legislation;

- (b) functions conferred by or in accordance with any provision contained in the Community Treaties or any Community instrument;
 - (c) similar functions conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;
 - (d) functions exercisable in relation to prescribed disciplinary proceedings.
- (6) “Enactment” includes –
- (a) an Act of the Scottish Parliament;
 - (b) Northern Ireland legislation.
- (7) “Subordinate legislation” has the meaning given in the Interpretation Act of 1978 and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation.
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S 352

- (1) A person who discloses information in contravention of section 348 or 350(5) is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (3) A person is guilty of an offence if, in contravention of any provision of regulations made under section 349, he uses information which has been disclosed to him in accordance with the regulations.
- (4) A person is guilty of an offence if, in contravention of subsection (4) of section 350, he uses information which has been disclosed to him in accordance with that section.
- (5) A person guilty of an offence under subsection (3) or (4) is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.
- (6) In proceedings for an offence under this section it is a defence for the accused to prove –
- (a) that he did not know and had no reason to suspect that the information was confidential information or that it had been disclosed in accordance with the section 350;
 - (b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Section 169 FSMA –

ASSISTANCE TO OVERSEAS REGULATORS

S 169

- (1) At the request of an overseas regulator, the Authority may –
 - (a) exercise the power conferred by section 165; or
 - (b) appoint one or more competent persons to investigate any matter.
- (2) An investigator has the same powers as an investigator appointed under section 168(3) (as a result of subsection (1) of that section).
- (3) If the request has been made by a competent authority in pursuance of any Community obligation the Authority must, in deciding whether or not to exercise its investigative power, consider whether its exercise is necessary to comply with any such obligation.
- (4) In deciding whether or not to exercise its investigative power, the Authority may take into account in particular –
 - (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
 - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
 - (c) the seriousness of the case and its importance to persons in the United Kingdom;
 - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (5) The Authority may decide that it will not exercise its investigative power unless the overseas regulator undertakes to make such a contribution towards the cost of its exercise as the Authority considers appropriate.
- (6) Subsections (4) and (5) do not apply if the Authority considers that the exercise of its investigative power is necessary to comply with a Community obligation.
- (7) If the Authority has appointed an investigator in response to a request from an overseas regulator, it may direct the investigator to permit a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation.
- (8) A direction under subsection (7) is not to be given unless the Authority is satisfied that any information obtained by an overseas regulator as a result of the interview will be subject to safeguards equivalent to those contained in Part XXIII.
- (9) The Authority must prepare a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (7) has been given.
- (10) The statement requires the approval of the Treasury.

- (11) If the Treasury approve the statement, the Authority must publish it.
- (12) No direction may be given under subsection (7) before the statement has been published.
- (13) “Overseas regulator” has the same meaning as in section 195.
- (14) “Investigative power” means one of the powers mentioned in subsection (1).
- (15) “Investigator” means a person appointed under subsection (1) (b).