



MEMORANDUM OF UNDERSTANDING

BETWEEN THE

NEW ZEALAND CUSTOMS SERVICE

AND THE

SERIOUS FRAUD OFFICE

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PART 1: INTRODUCTION

This Memorandum of Understanding is made:

Between The Comptroller and Chief Executive of the New Zealand Customs Service
And The Director and Chief Executive of the Serious Fraud Office

Introduction

- 1 The New Zealand Customs Service (Customs) is established under section 5 of the Customs and Excise Act 1996 to:
 - manage the movement of persons, goods and craft across the New Zealand border.
- 2 The Serious Fraud Office (SFO) is established under the Serious Fraud Act 1990 to:
 - detect, investigate and prosecute cases of serious or complex fraud.
- 3 The New Zealand Customs Service and the Serious Fraud Office, referred to hereafter as 'the parties', currently work together and offer advice to each other on investigations involving financial crime or corruption related matters. This Memorandum of Understanding (MOU) formalises and enhances this relationship and specifies the terms and conditions under which this will occur.

Recital

The Parties:

- 4 Recognise that Customs operates as the Government's agency to manage the movement of persons, goods and craft across the border, and minimise the risks associated with their cross-border movement.
- 5 Recognise that the SFO operates as the Government's agency that detects, investigates and prosecutes cases of serious or complex fraud.
- 6 Acknowledge that the SFO and Customs have different regulatory and legislative responsibilities and functions but share a common interest in protecting New Zealand and the New Zealand public from financial and trans-national crime and corruption.
- 7 Declare that for the purpose of better carrying out their respective responsibilities and functions, each party will cooperate with the other to ensure an efficient, effective and co-ordinated response in matters of operational inter-dependency and on matters of common interest.
- 8 Declare that through close cooperation and collaboration the SFO and Customs will achieve increased efficiency and effectiveness in the detection, investigation and prosecution of cases involving financial crime or corruption.

Interpretation

9 For this Memorandum of Understanding (MOU):

Areas of common interest mean those matters where each party contributes to a shared outcome or has a shared investigative or intelligence role or interest. This includes international agreements and cooperation, collaboration and coordination across the wider government sector. In relation to areas of common interest, the parties will, where practicable, work together to make explicit the principles on which the relationship is based between the SFO and Customs, for example:

- a. identifying policy linkages between the parties;
- b. developing sound and consistent policy advice;
- c. commitment to full and early consultation on matters falling within this MOU and schedules;
- d. commitment to achieving joint investigative and intelligence outcomes and results;
- e. commitment to assistance with joint expert and technical advice on matters of common interest;
- f. awareness of impacts for other parts of Government and for external agencies;
- g. enhance strategic relationships and operational collaboration with other agencies, where appropriate; and
- h. through attachment of the parties specialised personnel on specific investigations and/or through longer term secondments of such specialised personnel between the parties for the purpose of creating skills updates and operational enhancement within the parties.

Senior representative means, within the SFO, the Director and Chief Executive and within the New Zealand Customs Service, the Deputy Comptroller, Operations.

Parties' representatives means those persons designated by the Deputy Comptroller, Operations and the Director and Chief Executive to be responsible for the administrative management of this MOU and schedules and who are identified at Schedule 1.

Purpose

10 The purpose of this MOU is to promote a partnership principled approach to further enhance the cooperation, collaboration and coordination between the parties on areas of common interest and/or joint responsibility.

- 11 This agreement will be read in conjunction with Statutes, Regulations and Rules for the time being in force in New Zealand, and with particular regard to the:
- a. Customs and Excise Act 1966
 - b. Serious Fraud Act 1990
 - c. Official Information Act 1982
 - d. Search and Surveillance Act 2013
 - e. Privacy Act 1993 and/or
 - f. Any other relevant legislation

Definitions and words will have the same meaning as defined by statute or as commonly accepted by law.

Outcome

- 12 The agreed outcome of this MOU is for the parties to enable the most effective and efficient use of resources and information, therefore providing optimum benefit and protection to New Zealand and the New Zealand public.
- 13 While cooperation between the parties has traditionally focused on aspects associated with electronic forensics, the parties are concerned at the threat posed to New Zealand by financial and trans-national crime, including corruption. The parties are cognisant of the emergence of new forms of criminality, and in particular the use of new technologies and methods to facilitate new and traditional criminal activities. To mitigate these threats, the parties are committed to the sharing of resources, technology, and information.

Effect of this Memorandum of Understanding

- 14 This MOU confirms the relationship between the parties based on a spirit of collaboration and cooperation and replaces the previous MOU dated 15 June 2007. The parties will work together to achieve the agreed outcome outlined in paragraphs 12 and 13.

Liaison forum

- 15 The parties agree that:
- a. they will maintain a regular forum for liaison on areas of common interest ("the forum")
 - b. the forum will consist of the parties' Senior Representatives, or their delegated representatives;
 - c. the forum will be supported by a secretariat comprising of the parties' representatives for the maintenance of this MOU and schedules; and
 - d. the forum will meet as required but no less than once in each calendar year.

Review of Memorandum of Understanding

- 16 The parties will review this MOU every five (5) years or at any other time by mutual agreement of the Senior Representatives.

Schedules to the Memorandum of Understanding

- 17 The parties agree that from time to time they may develop protocols relating to specific matters involving the parties, and that these will be attached to this MOU as schedules.
- 18 Schedules may be amended, developed, added and withdrawn with approval from the parties' Senior Representatives, or their delegated representatives.
- 19 Schedules will be reviewed together with the MOU as detailed in paragraph 16.
- 20 A list of current schedules will be annexed to this MOU.

Communication and media strategies

- 21 The parties recognise the confidentiality and sensitivity of information concerning active investigations by either party.
- 22 Where appropriate, joint communication opportunities should be developed between the Senior Representatives. Where appropriate, joint policy positions should be developed.
- 23 Each party shall endeavour to consult with the other in advance if either is considering providing information or comment to the media on a matter which:
- a. comes within the other party's area of responsibility;
 - b. in which that other party has an interest; and
 - c. where it is recognised that there is a joint interest, both parties will provide information and/or comment.
- 24 Where, for reasons of urgency or statutory obligation, it is not possible or is impractical to obtain prior agreement, the party commenting will inform the other party of the public comment as soon as practicable after making the comment or releasing the report.
- 25 All correspondence and notices required by this MOU will be directed to the Senior Representatives.

Training

- 26 The parties encourage the exploration of opportunities to provide or participate in joint training activities that will enhance each party's capability.

Costs

- 27 The cost of meeting the general commitments of this MOU must be met by the party incurring the cost.

- 28 Costs directly attributable to an activity which is not routine may be recovered from the party requesting the activity, but the payment of such costs must be mutually agreed to by both parties in advance of incurring such costs.

Issue or dispute resolution

- 29 The parties will attempt, in the first instance, to resolve all issues or disputes concerning the interpretation or performance of this MOU and schedules locally (by local representatives or managers) at the earliest opportunity.
- 30 If agreement cannot be reached within a further period of 28 days then the matter will be referred, in writing, to the Comptroller and Chief Executive of Customs and the Director and Chief Executive of the Serious Fraud Office for their resolution.

Termination

- 31 Either party may terminate this MOU by providing one month's notice in writing to the other party.

Variations

- 32 Except as stated within this MOU, this MOU can only be varied through a written agreement duly signed by the Comptroller and Chief Executive of Customs and the Director and Chief Executive of the Serious Fraud Office and appended to this MOU. All such variations will form part of the MOU and will be reviewed in accordance with paragraph 16.

Conditions

- 33 Nothing within this MOU makes either party liable for the actions of the other, nor constitutes any legal relationship between the parties.
- 34 The provisions in this MOU must be read subject to any Chief Executive or Cabinet directive, and any enactment.
- 35 Where there are changes in Government policy which affect the purpose and functions of this MOU, the parties agree to inform the other of those changes at the earliest opportunity thereafter and agree to review, where necessary, any aspects of this MOU that is affected by the policy change.
- 36 The parties acknowledge their individual responsibility to ensure effective internal communication of this MOU and associated Schedules to all staff that should be aware of the intent and content of the MOU.



Signature for and on behalf of
New Zealand Customs Service

Name: Carolyn Tremain

Position: Comptroller and Chief Executive of
Customs

Date: 23rd May 2014



For and on behalf of the
Serious Fraud Office

Name: Julie Read

Position: Director and Chief Executive,
Serious Fraud Office

Date: 23/05/14

LIST OF SCHEDULES

Schedule 1	Parties' representatives
Schedule 2	Sharing information and Intelligence
Schedule 3	Referral of Cases
Schedule 4	Joint Investigations
Schedule 5	Electronic Forensics

SCHEDULE 1 – PARTIES' REPRESENTATIVES

New Zealand Customs Service

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Telephone (04) 901 4733

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Serious Fraud Office

Name *Nick Paterson, General Manager*

Address Level 6, 21 Queen Street, Auckland, 1141

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SCHEDULE 2 – SHARING INFORMATION AND INTELLIGENCE

Introduction

- 1 This schedule concerns the sharing of information and intelligence for operational enhancement. The parties have developed this schedule to the MOU for the purpose of cooperating in mutual information and intelligence sharing. The schedule identifies the specific responsibilities of both parties in contributing to the overall purpose of this schedule.

General provisions

- 2 This Schedule concerns the provision of information and intelligence between the parties as a means to enhance capacity, collaboration and operational effectiveness.

Information exchange

- 3 Requests for information should be made to a nominated and agreed person or position within each party.
- 4 Requests for information and the response to such requests should be documented in a manner that provides the ability to audit the process and material supplied.
- 5 Any sharing of information between the parties shall be lawful with regard to all statutory and other legal obligations including (but not limited to) those under the Privacy Act 1993.
- 6 Where a request is received by one party under the Official Information Act 1982 or the Privacy Act 1993, but more appropriately dealt with by the other party, it will be transferred over for response in accordance with those Acts.
- 7 Each party will protect information provided to it by the other party through ensuring sufficient security safeguards, as is reasonable, are in place, to protect against any loss or unauthorised access, use, modification or disclosure, or any misuse.
- 8 If either party has any issue in relation to the sharing of information then the matter must be referred to their party representative prior to any disclosure.

Intelligence exchange

- 9 The Serious Fraud Office may on request or at their own initiative provide to the New Zealand Customs Service intelligence held by the Serious Fraud Office on matters connected to the enforcement and maintenance of law, subject to relevant laws, for which the New Zealand Customs Service has an investigative or intelligence interest.
- 10 Similarly, the New Zealand Customs Service may on request or at their own initiative provide to the Serious Fraud Office intelligence held by the New Zealand Customs Service on matters connected to the enforcement and maintenance of the law, subject to relevant laws, for which the Serious Fraud Office has an investigative or intelligence interest.
- 11 In relation to the exchange of intelligence the parties agree that the operating guidelines to be followed are:
 - a. The parties must designate contact points within their organisation through which all requests for intelligence will be processed and authorised.
 - b. Each party will designate specific positions through which a request for intelligence from the other party forms a part of that positions role description.

- c. Requests for intelligence must be made in writing, although such request may be made orally where time restraints demand, and must be followed up in writing as soon as practicable.
 - d. Responses to requests for Intelligence will be responded to as soon as practicable in an agreed written format. However, where such responses are provided orally in response to time constraints, a written response is to be provided as soon as practicable.
 - e. Each party will be responsible for maintaining relevant records of requests and responses.
 - f. Intelligence received by one party from the other must not be disclosed to a third party or used in judicial proceedings without lawful authority, and first gaining agreement from the other party.
 - g. Both parties will respect and strictly adhere to any security caveat (including any Government Security Classification) attached to any intelligence provided by the other party.
 - h. Ownership of intelligence will remain with the originating party.
- 12 The obligations contained herein are subject to any rights or obligations as to the disclosure or withholding of information/intelligence as may be imposed by New Zealand law. Neither party will be obliged to supply intelligence where to do so:
- a. constitutes a breach of the law relating to defamation or breach of confidence; or
 - b. breach any law relating to the withholding or disclosure of information by a government agency or statutory body (including the Privacy Act 1993 and the Official Information Act 1982, or any enactment in substitution or of like effect.)
- 13 Inappropriate access, dissemination or use of intelligence obtained by one party from the other is to be subject to a disciplinary investigation by the party of that employee(s) in accordance with that party's code of conduct provisions.

Commencement, Review and Variation

- 14 This schedule enters into effect on the date of signing of the MOU.
- 15 This schedule will be reviewed in accordance with paragraph 16 of the MOU.
- 16 Variations to this schedule shall be considered neither binding nor a part of the MOU unless they are in writing and executed by duly authorised representatives from both parties.

SCHEDULE 3 – REFERRAL OF CASES

Purpose

- 1 The purpose of this schedule is to facilitate cooperation between Customs and the SFO in relation to suspected offending pursuant to the Customs and Excise Act 1996, the Crimes Act 1961 and/or the Secret Commissions Act 1910.
- 2 Each party brings a different dimension to any particular investigation. It is recognised that there may be overlaps in the remit of the parties from time to time and this schedule establishes the overarching parameters for addressing such overlaps.

Responsibilities

- 3 The parties each wish to know about matters covered under the auspices of this schedule at the earliest practicable time in their respective investigative roles and responsibilities. This will ensure that both parties are able to obtain maximum benefit from the powers of investigation that they have available to them under their respective legislative authorities, and to minimise the opportunity for alleged offenders to destroy or alter any documentary evidence relating to an investigation.
- 4 The parties have agreed the process for the notification to the other of suspected offending. The purpose of notification is for one party to advise the other at the earliest practicable opportunity of particular matters and to allow that party to determine whether any such matters may fall within their remit.
- 5 The SFO wishes to know of all suspected offending relating to serious or complex fraud. In determining whether serious or complex fraud has occurred, the following is used as a general guide:
 - a. The nature of the suspected fraud, including any factual, financial, or legal complexity;
 - b. The impact of the alleged offending on public confidence in New Zealand as safe place to invest, or on the integrity of New Zealand's financial or commercial markets;
 - c. The number of investors and/or victims involved and the impact of the alleged offending on them;
 - d. Public interest considerations and the likely preventative impact of a successful prosecution;
 - e. The suspected scale of the alleged offending; and
 - f. Where the allegations include corruption or bribery.
- 6 Customs wishes to be advised of all matters under investigation where:
 - a. the SFO considers that there may be an offence under the Customs and Excise Act 1996 or other legislation under which Customs exercises powers; or
 - b. the SFO considers that matters may require investigation by Customs.

- 7 Both parties undertake, as a general principle, that when any matter is forwarded to it by the other, a decision will be made as to whether an investigation will be initiated within ten (10) working days. The investigation file will be returned forthwith if responsibility for the investigation is not assumed by the recipient party.

Obligations

- 8 To the extent allowable, one party will keep the other informed regarding:
 - a. any investigation into a matter referred to it by the other party; and
 - b. any other investigation by one party where they believe the other may hold an interest.
- 9 The SFO will refer to Customs any information in its possession that the SFO believes may be relevant to the legislative responsibilities of Customs where the SFO determines not to investigate a matter, or not to investigate a matter any further, provided that such disclosure is allowed by law.

Commencement, Review and Variation

- 10 This schedule enters into effect on the date of signing of the MOU.
- 11 This schedule will be reviewed in accordance with paragraph 16 of the MOU.
- 12 Variations to this schedule shall be considered neither binding nor a part of the MOU unless they are in writing and executed by duly authorised representatives from both parties.

SCHEDULE 4 – JOINT INVESTIGATIONS

Introduction

- 1 This schedule applies to situations where the parties agree to engage in joint investigations and provides guidelines and protocols to establish and clarify the responsibilities and command structure for such joint investigations.

Interpretation

- 2 In this schedule the following terms shall have the meaning set out below:
 - a. Joint investigation – any investigation where agreement between the parties' leads to operation orders being prepared that commits the parties to provide resources in order to conduct a joint operation.
 - b. Operational command – provides command of a joint operation which can reside with either party, upon agreement.
 - c. Statutory responsibility – relates to each parties responsibility to enforce an enactment of law.
 - d. Common interest relates to enforcement of the law where a particular enactment defines joint responsibilities of the parties.

General provisions

- 3 Joint operations are to be conducted pursuant to operation orders, either being written or oral, that are discussed and agreed to by both parties prior to the commencement of the operation, and where any changes affecting the course or outcome of the operation are to be agreed by both parties prior to implementation.
- 4 As a matter of principle, it is agreed that where practicable operation orders, and any changes, should be written.
- 5 Costs directly attributable to an operation that is not routine for a party may be recovered from the party requesting the joint operation provided that this is mutually agreed by both parties in advance of incurring the costs.

Command structure

- 6 Both parties agree that in joint operations there will be appointed an Officer in Charge (OIC) who shall have overall operational command, including termination. The OIC will be appointed after due consideration of the joint operation's location, jurisdiction, nature, scope, deployed force elements and the targeted outcome.
- 7 All decisions made by the OIC will be made following consultation between the parties where practicable, including responsibility for the arrest and prosecution of offenders.

Operational matters

- 8 The parties shall, subject to priorities or other imperatives, make available personnel and equipment in support of joint operations. The allocation and use of these resources will be determined, agreed and included in the Operation Orders.
- 9 In all joint operations a risk assessment will be standard procedure and part of the planning phase in accordance with the policies and procedures of the parties.
- 10 It is the responsibility of the parties to ensure that all personnel involved in joint operations are aware of the provisions of this schedule.
- 11 Both parties will strive to ensure compatibility and interoperability of specialist equipment where practicable.

Commencement, Review and Variation

- 12 This schedule enters into effect on the date of signing of the MOU.
- 13 This schedule will be reviewed in accordance with paragraph 16 of the MOU.
- 14 Variations to this schedule shall be considered neither binding nor a part of the MOU unless they are in writing and executed by duly authorised representatives from both parties.

SCHEDULE 5 – ELECTRONIC FORENSICS

Introduction

- 1 The SFO and Customs will cooperate in the application of electronic forensics in an investigative and law enforcement context. This schedule identifies the specific responsibilities of both parties in contributing to this desired outcome.

Interpretation

- 2 In this schedule, unless the context otherwise requires, the following terms shall have the meaning set out opposite them respectively:
 - a. Electronic Forensic Investigator (EFI) – means Customs Electronic Forensic Investigators, employed by Customs to undertake examination and analysis of electronic media.
 - b. Electronic Forensic Unit (EFU) – means the Customs office where electronic forensic examination and analysis is undertaken.
 - c. SFO Electronic Forensic Investigator (SFOEFI) – means any staff member of the SFO undertaking electronic forensic examination and analysis.
 - d. Forensic copy – means the copying of data from electronic media in a forensically sound manner following current practices and principles acceptable in Courts of Law.

Operating guidelines

- 3 The parties agree that for as long as this schedule remains in effect, the operating guidelines to be followed in regard to electronic forensics shall be as follows:
 - a. The parties agree to equitably share in the costs of establishing and maintaining a dedicated electronic forensics laboratory facility, which will be located within the Customhouse, Auckland.
 - b. Both parties will jointly review staffing needs, and the purchase of requisite equipment and software, as required to maintain that capability of the EFU.
 - c. There will be, from time to time, practices and procedures put into place to facilitate the day to day operations of the EFU and the relationship between the parties. Both parties agree to abide by the practices and procedures, once agreed.
 - d. Each party will designate two (2) representatives to form a governance oversight of the operation of the EFU and its strategic direction.
 - e. The parties shall respect and adhere to any security endorsement or caveat (including and Government Security Classification) attached to any information or intelligence.
 - f. Ownership of information or intelligence shall remain with the originating party.

- g. Inappropriate access, dissemination, or use of information and intelligence obtained by one party from the other is to be subject to disciplinary investigation and action by the party responsible for the breach in accordance with that party's code of conduct and statutory provisions.

Examination and Analysis Provisions

- 4 Each party agrees to cooperate with requests from the other party to render assistance in the examination and analysis of electronic media.
- 5 Requests for assistance may be made verbally or in writing by either party and shall be responded to in a timely manner.
- 6 SFOEFI shall have full access to the dedicated facility and its equipment, to enable them to undertake forensic analysis of electronic data.
- 7 The EFU may receive electronic media from the SFOEFI, for the purpose of forensic copying of data. The original exhibits, forensic copy and briefs of evidence relating to forensic copying will be provided to SFOEFI within five (5) working days unless operational activities dictate otherwise
- 8 Where operational activity by either party requires the attendance of staff, and/or equipment, either party can utilise those services where reasonable notice is provided, and where utilisation of these services does not prejudice other priority operational activity of the party requested.

Commencement, Review and Variation

- 9 This schedule enters into effect on the date of signing of the MOU.
- 10 This schedule will be reviewed in accordance with paragraph 16 of the MOU.
- 11 Variations to this schedule shall be considered neither binding nor a part of the MOU unless they are in writing and executed by duly authorised representatives from both parties.