



**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION (TTSEC)**

**AND**

**THE CENTRAL BANK OF TRINIDAD AND TOBAGO (CBTT)**

**FOR THE EXCHANGE OF INFORMATION**

**AND**

**COOPERATION AND CONSULTATION**



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## **PREAMBLE**

This Memorandum of Understanding (hereinafter "Memorandum") is entered into between the Trinidad and Tobago Securities and Exchange Commission ("TTSEC") and the Central Bank of Trinidad Tobago ("CBTT") (together referred to as "the Authorities").

### **Whereas the Authorities:**

Recognise the need for mutual cooperation between the Authorities in the carrying out of their regulatory and supervisory functions under the relevant Laws, Regulations and Rules.

### **Whereas the Authorities:**

Acknowledge the importance of compliance with relevant international standards established by international standard setting bodies such as the Basel Committee on Banking Supervision, the International Association of Insurance Supervision and the International Organization of Securities Commission.

### **Whereas the Authorities:**

Acknowledge further that the Laws, Regulations and Rules that apply to the TTSEC and the CBTT are designed to protect the legitimate interests of customers and may limit the transmission of information between the Authorities and recognize that this Memorandum does not create any legally binding obligations, confer any right, modify or supersede any domestic laws or regulatory requirements that apply to the Authorities.

### **Whereas the Authorities:**

Acknowledge that the Authorities will remain solely and fully responsible for the proper execution of their respective competencies, tasks and duties under applicable Laws, Regulations and Rules.

**IT IS HEREBY AGREED** between the Authorities as follows:-

**1. DEFINITIONS**

**"The Authorities"** means the CBTT and the TTSEC;

**"CBTT"** means the Central Bank of Trinidad and Tobago as governed by the Central Bank Act Chap. 79:02;

**"Financial Entity"** means a bank, a non-bank financial institution, an insurance company and any other entity that provides financial services that is regulated and supervised under the Financial Institutions Act of Trinidad and Tobago Chap. 79:09 and the Insurance Act of Trinidad and Tobago Chapter 84:01;

**"Laws, Regulations and Rules"** means the provisions of the laws or the regulations and requirements promulgated thereunder, governing the CBTT and the TTSEC and other regulatory requirements that fall within the jurisdiction of the Authorities as amended, re-enacted or modified by any statute or statutory provision;

**"Licensed Entity"** means any person carrying out activities requiring licensing authorization or registration by either Authority or who is subject to the operative legislation by either Authority;

**"Person"** means a natural person, a corporation whether aggregate or sole, an unincorporated body of persons or a trust;

**"Regulatory Arbitrage"** means the capitalization by Persons, Financial Entities and Licensed Entities of loopholes in the Laws, Regulation and Rules in order to circumvent unfavorable regulation;

**"Requested Authority"** means the Authority to whom a request is made pursuant to this Memorandum;

**"Requesting Authority"** means the Authority making a request under this Memorandum;

**"Self-Regulatory Organization"** means an organization designated as such under the Securities Act No. 17 of 2012.

**"TTSEC"** means the Trinidad and Tobago Securities and Exchange Commission as governed by the Securities Act No. 17 of 2012.

## **2. INTENTION**

2.1 This Memorandum sets forth a statement of intent of the Authorities to establish a framework to facilitate the exchange of information between the Authorities and to enforce or secure compliance with any Laws, Regulations and Rules relating to the functions and duties of the Authorities.

2.2 The Authorities intend to provide one another with assistance under this Memorandum to the full extent permitted by the Laws, Regulations and Rules.

2.3 The Authorities intend either through their own initiatives or by request, to share relevant information, corporate structure, administration, quality of organization and systems, the quality of management and any other information that may be relevant to the adequate supervision of Financial Entities, Licensed Entities, Persons or the Securities Industry. The Authorities will seek to identify group operations and share any information that can facilitate adjustments to consolidated financial statements or present a risk to the operations of the Financial Entities, Licensed Entities, Persons or the Securities Industry.

2.4 This Memorandum will serve to promote integrity, efficiency and financial soundness of Financial Entities, Licensed Entities, Persons and the Securities Industry.

2.5 This Memorandum does not create any binding legal obligation upon the Authorities.

2.6 The Authorities intend, where legal authorisation is lacking, to actively pursue all avenues towards obtaining by law, all the necessary powers for the effective achievement of the objectives of this Memorandum.

2.7 The provisions of this Memorandum do not lead to the right of any Person, directly or indirectly, to obtain, suppress or exclude any information, or to challenge the execution of a request for assistance under this Memorandum.

2.8 The Authorities will use reasonable efforts to provide each other, as permitted by the Laws, Regulations and Rules, with any information that they discover that relate to the safety and soundness of a Financial Entity or Licensed Entity and the fairness and efficiency of the securities industry.

### **3. SCOPE**

3.1 Through the mechanism set up by this Memorandum, the Authorities agree to promote mutual assistance and exchange of information to enable the Authorities to perform their respective duties and functions effectively according to the Laws, Regulations and Rules.

3.2 The scope of this Memorandum includes:

- (a) Providing mutual assistance in the enforcement of the Laws, Regulations and Rules relating to Financial Entities and Licensed Entities subject to regulation by the Authorities;
- (b) Ascertaining that senior personnel and other individuals who may impact the strategic direction of the Financial Entity or Licensed Entity are fit and proper persons for the conduct of the business of the Financial Entity or Licensed Entity;
- (c) Avoiding Regulatory Arbitrage;
- (d) Ensuring that Self-Regulatory Organizations can obtain information on the compliance of their members with Laws, Regulations and Rules;
- (e) Cooperating in enforcement action and litigation;
- (f) Cooperating in the harmonization of the Laws, Regulations and Rules used by the Authorities in the conduct of their functions;
- (g) Protection of investors;
- (h) Cooperating in the identification of financial criminal activities in Financial Entities, Licensed Entities and financial transactions, in particular, money laundering, unauthorized banking, investment or insurance business and all other violations of laws as they relate to financial markets and the securities industry;
- (i) Cooperating in identifying Persons who beneficially own or control non-natural Persons;
- (j) Any regulatory matters agreed upon between the Authorities from time to time as evidenced in writing.

#### **4. REQUESTS FOR INFORMATION AND ASSISTANCE**

4.1 This Memorandum does not affect the ability of the Authorities to obtain information from Persons on a voluntary basis, provided that the Authorities observe the relevant procedures for the obtaining of such information.

4.2 Requests for information and assistance by a Requesting Authority will be made in writing through an original signed document addressed to the Requested Authority's contact person listed in **Appendix A**.

4.3 A request for information or assistance will include:

- (a) A general description of the subject matter of the request and the purpose for which the assistance or information is sought;
- (b) A description of the assistance, documents or information sought by the Requesting Authority;
- (c) Any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the Persons or entities believed by the Requesting Authority to possess the information sought, or the place where the Authority may obtain such information requested;
- (d) The legal provisions concerning the subject matter of the request and the relevance of the requested assistance of information to the specified Laws, Regulations or Rules;
- (e) Whether any other authority, governmental or non-governmental is cooperating with the Requesting Authority or seeking information from the confidential files of the Requesting Authority and to whom onward disclosure of information is likely to be necessary;
- (f) An indication of any special precautions that should be taken in collecting the information due to investigatory considerations, including the sensitivity of the information; and
- (g) The Laws, Regulations and Rules that may have been violated and that relate to the subject matter of the request.



4.4 The Authorities should advise each other of any changes to the relevant contact person Listed in **Appendix A** as soon as reasonably practicable.

4.5 In urgent circumstances, the Requested Authority will accept a request for assistance by electronic mail or facsimile. Such urgent communications must be confirmed in writing within five business days.

## **5. EXECUTION OF REQUESTS**

5.1 Where the Requested Authority is satisfied in accordance with this Memorandum and the Laws, Regulations and Rules governing the Requested Authority that the assistance or information should be given, the Requested Authority will provide information held in the files of the Requested Authority or provide the assistance requested.

5.2 Each request will be assessed on a case-by case basis by the Requested Authority to determine whether assistance or information can be provided under the terms of this Memorandum.

5.3 The response to an urgent request for assistance or information will be expedited, to the extent possible by telephone or facsimile. The Requested Authority must confirm such urgent communication through an original signed document addressed to the Requesting Authority's contact person within five business days.

## **6. UNSOLICITED INFORMATION**

To the extent permitted by Laws, Regulations, and Rules, where one Authority has information that will assist the other Authority to perform its regulatory functions, the former may provide such information, or arrange for such information to be provided fully and freely even though the other Authority has made no request. The terms and conditions of this Memorandum will apply if the authority providing the information specifies that it is providing the information under this Memorandum.

## **7. PERMISSIBLE USES OF INFORMATION**

7.1 Any assistance or information provided under this Memorandum shall be used by the Requesting Authority only for the purpose of enabling the Requesting Authority to exercise its regulatory functions as specified in the request, including, but not limited to, conducting a civil or administrative enforcement procedure, assisting in a criminal prosecution or conducting any investigation for any general charge applicable to the violation of the provision specified in the request, where such general charge pertains to Laws, Regulations and Rules administered by the Requesting Authority. This may include enforcement proceedings which are public.

7.2 Subject to Clause 8 the Requesting Authority may not use information furnished for any purpose other than that identified in Clause 4.3 (a) without the written consent of the Requested Authority.

7.3 If the Requesting Authority wants to use the information obtained for any purpose other than that stated in Clause 4.3(a), the Requesting Authority must notify the Requested Authority of its intention and the Requested Authority shall, if it deems fit, consent in writing to such use, prior to the information being used by the Requesting Authority for such other purpose.

7.4 Where the Requesting Authority believes that sharing confidential information with a third party is necessary, it must inform the Requested Authority of the third party's interest in the information. The Requested Authority shall, if it deems fit, consent in writing to the information being shared with or used by the third party prior to the information being used by the Requesting Authority for its purposes under Clause 4.3 (a) or 7.2. For the purposes of this Memorandum, confidential information includes but is not limited to matters such as the identity, assets, liabilities, transactions or accounts of a Financial Entity, Licensed Entity or Person.

7.5 In the event that the Requested Authority opposes such use as referred to in clause 7.3 and 7.4 the Requested Authority and Requesting Authority may consult to determine the appropriate terms, if any, under which the information may be so used.

## **8. CONFIDENTIALITY**

8.1 The Authorities will, to the full extent permitted by the Laws, Regulation and Rules, keep confidential:-

8.2 The Requesting Authority shall not disclose the assistance or information obtained pursuant to this Memorandum to third parties without the prior written consent of the Requested Authority.

8.3 The Authority may provide any information received from a Requested Authority to another financial services regulatory agency or body within Trinidad and Tobago upon the prior written consent of the Requested Authority. Such approval will not normally be withheld if:

- (a) The purpose of sharing such information to such an agency or body falls within the scope of this Memorandum; and
- (b) A prior undertaking has been obtained from the recipient by the Requested Authority, that it will and is legally obliged to maintain the confidentiality of the information.

8.4 The confidential treatment of assistance and information by Authorities will continue when either Authority gives notice of its intention to cease cooperation under this Memorandum. The Authorities understand that the Laws, Regulations and Rules place limitations on the use and disclosure of non-public information obtained pursuant to this Memorandum.

8.5 In the event that an Authority is legally compelled by an order of the court to disclose to a third party, including a third party supervisory authority, information that has been provided in accordance with this Memorandum, that Authority shall prior to complying with the demand, promptly notify the Requested Authority, indicating the information it is compelled to release and the circumstances surrounding its release. The Requesting Authority will also assert such appropriate legal exemptions or privileges with respect to such information, as may be available and will use its best efforts to protect the confidentiality of non-public documents and information received under this Memorandum.

## **9. RIGHTS OF REQUESTED AUTHORITY**

9.1 The Requested Authority may deny requests for information and assistance under this Memorandum:-

- a) Where the request would require the Requested Authority to act in a way that would violate the laws of the Requested Authority;
- b) Where the request is not in accordance with this Memorandum; or
- c) On grounds of public interest or essential national interest.

9.2 Where the Requested Authority denies or opposes a request for assistance or information, or where assistance or information is not available under the Laws Regulations and Rules, the requested Authority will provide the reasons why it is not granting the assistance.

9.3 The Authorities recognise that this Memorandum does not limit or enhance their respective powers to investigate or gather information or take measures otherwise than as provided in this Memorandum to obtain information, whether or not concerning a request under the Memorandum.

## **10 CONSULTATION**

10.1 The Authorities will consult each other periodically to enhance regulatory cooperation, improve the operation of the Memorandum and resolve any matters that may arise including but not limited to:

- (a) A change in market or business conditions, or in the Laws, Regulations and Rules, or any other difficulty arising which makes it necessary to amend or extend the Memorandum;
- (b) Matters of mutual interest to enhance cooperation and to protect investors and depositors by ensuring the stability, efficiency and integrity of the financial services industry and the securities industry; or
- (c) The administration of the Laws, Regulations and Rules.

The purpose of such consultations is to assist in the development of mutually agreeable approaches to strengthening the financial services industry and the securities industry, whilst avoiding whenever possible conflicts that may arise from the application of differing regulatory practices.

The Authorities will consider the need for additional measures for the exchange of supervisory and surveillance information in the administration of Laws, Regulations and Rules on Financial Entities, Licensed Entities and Persons on an ongoing basis. To this end the Authorities will inform one another of the adoption of measures that may affect the respective Authority's ability to provide assistance under this Memorandum.

10.2 The Authorities may take practical measures necessary to facilitate the implementation of this Memorandum. As such, the Authorities may by agreement in writing amend, relax or waive any of the terms of this Memorandum.

**11 COSTS OF INVESTIGATION**

If the cost of fulfilling a request is likely to be substantial, the Requested Authority may, as a condition of agreeing to give assistance or information under this Memorandum, require the Requesting Authority to make a contribution to its cost in an amount agreed to by the Authorities.

**12 REVIEW AND AMENDMENT**

No waiver, amendment or alteration to this Memorandum shall be effective unless made in writing and executed by the Authorities.

**13 EFFECTIVE DATE**

Cooperation in accordance with this Memorandum will begin on the date of execution by the Authorities.

**14 TERMINATION**

14.1 An Authority may terminate its participation in this Memorandum at any time by giving at least 30 days prior written notice to the other Authority.

14.2 This Memorandum will continue in effect until the expiration of 30 days after an Authority gives written notice to the other Authority of its intention to discontinue cooperation and assistance under this Memorandum. If an Authority gives a termination notice, cooperation and assistance in accordance with this Memorandum will continue with respect to all requests for assistance that were made or information provided before the effective date of notification (as indicated in the notice but no earlier than the date the notice is sent) until the Requesting Authority terminated the matter for which assistance was requested. The provisions of this Memorandum concerning confidentiality will continue thereafter with respect to information in the possession of the Requesting Authority.

**15 DISPUTE RESOLUTION**

Where a dispute arises out of the interpretation, operation and implementation of this Memorandum, the Authorities will make every effort to have such dispute settled amicably through consultation or negotiation between the Authorities.

SIGNED this 6<sup>th</sup> day of JANUARY 2014

FOR AND ON BEHALF OF THE  
TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION

P. L. W. T.

SIGNED this 6<sup>th</sup> day of JANUARY 2014

FOR AND ON BEHALF OF  
THE CENTRAL BANK OF TRINIDAD AND TOBAGO

R. G. Murray.