

Multilateral Memorandum of Understanding

Between

*Members of the
Group of International Financial Centre Supervisors*

For the

Exchange of Information

And

Co-operation and Consultation

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This Multilateral Memorandum of Understanding (hereinafter “Memorandum”) is entered into between the Competent Authorities (hereinafter “Authorities”) being members of the Group of International Financial Centre Supervisors (hereinafter “GIFCS”) which are signatories to this Memorandum. This Memorandum has been prepared to ensure clarity and encourage effective regulatory co-operation between all relevant competent authorities, including the framework of respective roles and requirements of such authorities, in order to achieve effective regulation and supervision; and to make provision for confidentiality rules regarding the sharing and exchange of information.

Those Authorities which have signed Appendix A to this Memorandum will have the full benefit of the provisions within the Memorandum and in signing warrant that their legislation allows them to give full effect to the Memorandum.

Those Authorities which have signed Appendix B to this Memorandum agree and evidence an intention to work towards the enactment of legislation that will permit them within 3 years of signing to notify a GIFCS Plenary of their intention to thereafter sign Appendix A.

Whereas the Signatories:

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

Acknowledge the importance of compliance with relevant international standards established by international standard setting bodies such as the Financial Action Task Force, as well as the “Standard on Regulation of Trust and Corporate Service Providers” established by GIFCS.

Acknowledge further that the Laws, Regulations and Rules of each jurisdiction are designed to protect the legitimate interest of clients of Trust and Corporate Service Providers and may limit the transmission of information among Authorities and recognise that this Memorandum cannot override or modify such Laws, Regulations or Rules.

This Memorandum is intended to enhance the existing working relationship between the Authorities.

Now it is hereby agreed between the Signatories as follows:-

1. DEFINITIONS

For the purpose of this Memorandum:

“Authority” means a regulatory authority that is empowered by law to supervise a Trust and Corporate Service Provider.

“Financial Institution” means an institution operating as a Trust and/or Corporate Service Provider that is regulated and supervised by any of the Authorities;

“Jurisdiction” means the country, state or other territory, as the case may be, in which any of the Authorities have legal authority, power and/or jurisdiction by law;

“Laws, Regulations and Rules” mean the provisions of the laws or the regulations and requirements promulgated thereunder, of the jurisdiction of the Authorities on the operations of Financial Institutions;

“Person” means a natural person, body corporate, partnership, or unincorporated association, government or political subdivision, agency or instrumentality of a government;

“Requested Authority” means the Authority to whom a request is made pursuant to this Memorandum; and

“Requesting Authority” means an Authority making a request pursuant to this Memorandum.

For other defined terms see the GIFCS Trust and Corporate Service Provider Standard of 23rd September 2014

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 or Rules relating to the functions and duties of the Authorities in their respective jurisdictions.
- 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 of their respective jurisdictions.
- 2.3. The Authorities intend either through their own initiatives or by request, to share relevant information including but not limited to financial information, corporate structure, administration, quality of organisation and systems, the quality and integrity of management and any other information that may be relevant to the supervision of Financial Institutions.
- 2.4. This Memorandum will serve to promote the integrity, efficiency and financial soundness of Financial Institutions by improving the regulation and enhancing the supervision of cross-border transactions.
- 2.5. This Memorandum does not create any binding legal obligations upon the Authorities or supersede domestic laws in the Jurisdictions of the Authorities or any other multilateral or bilateral agreements entered into by any of the Authorities.
- 2.6. The provisions of this Memorandum does not create a 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.
- 2.7. 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, soundness and operation of a Financial Institution.

3. SCOPE

- 3.1. Through the mechanism set up by this Memorandum, the Authorities agree to provide 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 of their respective Jurisdictions.
- 3.2. The scope of this Memorandum includes:
 - (a) Enforcement of the Laws, Regulations and Rules relating to Financial Institutions subject to regulation by the Authorities in their respective Jurisdictions.
 - (b) Ascertaining that senior personnel and other individuals who may impact the strategic direction of the Financial Institution, such as Controllers, are fit and proper persons for the conduct of the business of the Financial Institution.

- (c) All aspects of supervision of Financial Institutions, including licensing, ongoing supervision and winding up.
- (d) Any regulatory matters agreed upon between the Authorities from time to time.

4. REQUESTS FOR ASSISTANCE OR INFORMATION

- 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 procedures in the jurisdiction of each Authority for the obtaining of such information.
- 4.2. A Requesting Authority will make requests for assistance or information by electronic communications attaching a scanned original signed document addressed to the Requested Authority's contact person listed in Appendix C. A Requested Authority may ask that the original signed request be sent by post but, providing that it complies with paragraph 5 then any request for the original should not delay the commencement of work on it.
- 4.3. The request shall include:
 - (a) A description of both 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 believed by the Requesting Authority to possess the information sought, or the places where the Requested Authority may obtain such information;
 - (d) The legal provisions concerning the matter that is the subject matter of the request and the relevance of the requested assistance or information to the specified Laws, Regulations and Rules;
 - (e) The names of any third parties to whom the Requesting Authority is bound to or expects to release the requested information.
- 4.4. All Authorities should advise the other parties to this Memorandum of any change to the relevant contact person as soon as is reasonably practicable.
- 4.5. In urgent circumstances, the Requested Authority will accept a request for assistance or information effected by means of communication other than that required by paragraph 4.2 above. Such urgent communication must be confirmed within 5 business days in accordance with paragraph 4.2.

5. EXECUTION OF REQUESTS

- 5.1. Where the Requested Authority is satisfied in accordance with this Memorandum that assistance or information should be given, the Requested Authority will:
 - 5.1.1. Provide information held in the files of the Requested Authority.
 - 5.1.2. Use its powers to seek information from Financial Institutions
- 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. Where an urgent request for assistance or information is made it will to the extent possible be expedited. A response will be given by telephone, facsimile or electronic communications as appropriate and confirmed, if requested, by the dispatch within 5 business days of an original signed document addressed to the Requesting Authority's contact person.

6. UNSOLICITED INFORMATION

- 6.1. Where one Authority has information that will assist another Authority to perform its regulatory functions, the former may provide such information, or arrange for such information to be provided fully and freely, to the extent permitted by the Laws, Regulations and Rules of its Jurisdiction even though the other Authority has made no request. The terms and conditions of this Memorandum will apply if the providing Authority specifies that it is passing 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 under its Laws, Regulations and Rules.
- 7.2. Subject to paragraph 9.4, the Requesting Authority may not use information furnished for any purpose other than that identified in paragraph 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 those stated in paragraphs 7.1 and 7.2 it must seek the approval of the Requested Authority which shall, if it deems fit, consent.
- 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 Requesting Authority shall seek the consent of the Requested Authority which 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 paragraphs 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 Institution.

- 7.5. In the event that the Requested Authority opposes such use as referred to at paragraphs 7.3 and 7.4 the Requested and Requesting Authorities may consult to determine the appropriate terms under which the information may be so used.

8. UNDERTAKING OF INSPECTION VISITS

- 8.1. An Authority may make a request to undertake inspection visits to Financial Institutions in the Jurisdiction of the Requested Authority (either directly or through delegated third parties), where relevant and necessary to fulfil its obligations as the supervisor of a Financial Institution. The Requesting Authority shall, unless there are exceptional circumstances, give at least 30 days' notice to the Requested Authority of the time and scope of the inspection and shall provide the Requested Authority with a list of names of the individuals who will conduct the inspection (the "Inspection Team").
- 8.2. The Requested Authority has the right to accompany the Requesting Authority on any inspection visit that it undertakes within its Jurisdiction.
- 8.3. Prior to the commencement of any on-site inspection:
- 8.3.1. The Requesting Authority will discuss the scope of the inspection, and any other matters of interest to the Authorities, at the Requested Authority's office.
- 8.3.2. All members of the Inspection Team will be required to give an undertaking to comply with the confidentiality provisions of the legislation in the Jurisdiction of the Requested Authority.
- 8.4. The Requesting Authority will discuss the inspection findings with the Requested Authority and will inform the Requested Authority promptly of any regulatory action that it intends to take as a result of the inspection. The Requested Authority will also advise the Requesting Authority of any regulatory action it intends to take against the Financial Institution under its supervision arising from the inspection.

9. CONFIDENTIALITY

- 9.1. The Authorities will, to the full extent permitted by their Laws, Regulations and Rules, keep confidential:
- (a) Any request for assistance or information pursuant to this Memorandum;
 - (b) The contents of any request made pursuant to this Memorandum;
 - (c) Any information received or provided pursuant to this Memorandum; and

- (d) Any matter arising during the operation of this Memorandum, including consultations and unsolicited information.
- 9.2. The Requesting Authority shall not provide to any Person information provided to it by the Requested Authority unless that Person agrees in writing or is legally obligated to maintain the confidentiality of the information.
- 9.3. The confidential treatment of assistance and information by Authorities will continue when any Authority gives notice of its intention to cease cooperation under this Memorandum. The Authorities understand that the Laws, Regulations and Rules of their respective Jurisdictions, place limitations on use and disclosure of non-public information obtained pursuant to this Memorandum.
- 9.4. In the event that an Authority is legally compelled by legislation or 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 should promptly notify the other Authority, indicating what information it is compelled to release and the circumstances surrounding its release. The Authorities will thereafter work together to take such steps as are reasonable to protect the confidentiality of the information subject to the compulsion.

10. RIGHTS OF REQUESTED AUTHORITY

- 10.1. The Requested Authority may deny requests for assistance under this Memorandum:
- (a) Where the request would require the Requested Authority to act in a way that would violate the Laws, Regulations and Rules of the Jurisdiction of the Requested Authority;
 - (b) Where the request is not in accordance with the provisions of this Memorandum;
 - (c) Where corresponding assistance would not be given in the country of or territory of the Requesting Authority;
 - (d) On the grounds of public interest.
- 10.2. Where the Requested Authority denies a request for assistance, or where assistance is not available under the Laws, Regulations and Rules of the Jurisdiction the respective Authorities will consult and co-operate with one another to the extent possible with respect to that request.
- 10.3. The Authorities recognise that they intend nothing in the Memorandum to either limit or enhance the powers of the Authorities under the Laws, Regulations and Rules of their respective Jurisdictions to investigate or gather information or to take measures otherwise than as provided in the Memorandum to obtain information, whether or not concerning a request under the Memorandum.

11. CONSULTATION

- 11.1. The Authorities will consult with each other on a regular basis and co-operate in an effort to improve the operation of the Memorandum and resolve any matters that may arise in relation to the supervision of Financial Institutions including but not limited to:
- (a) A change in market or business conditions or in Laws, Regulations or Rules, or any other difficulty arising which makes it necessary to amend or extend the Memorandum;
 - (b) Matters of mutual interest to enhance co-operation by ensuring the stability, efficiency, and integrity of the financial services industry in their respective Jurisdictions;
 - (c) The co-ordination of the supervision of Financial Institutions;
 - (d) Co-operation to increase the effectiveness of supervision of groups which operate Financial Institutions in different Jurisdictions;
 - (e) Co-operation to reduce opportunities for regulatory arbitrage by Financial Institutions; and
 - (f) The administration of their respective Laws, Regulations and Rules. The purpose of such consultations is to assist in the development of mutually agreeable approaches for strengthening the financial services industries of their respective jurisdictions whilst avoiding, whenever possible, conflicts that may arise from the application of differing regulatory practices.
- 11.2. 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 concerning Financial Institutions in their respective jurisdictions, on an ongoing basis. To this end, the Authorities will inform one another of the adoption of domestic measures that may affect their respective authority to provide assistance under this Memorandum.
- 11.3. The Authorities may take practical measures as may be necessary to facilitate the implementation of the Memorandum. As such, the Authorities by consensus may waive, amend or alter any of the terms of the Memorandum.

12. COSTS OF INVESTIGATION

- 12.1. Where substantial costs are expected to be incurred in responding to a request for assistance under this Memorandum, the Requested Authority may, before commencing work on the request for assistance, require the Requesting Authority to contribute to its cost in an amount agreed upon by the Authorities involved.

13. TERMINATION OF THE MEMORANDUM

- 13.1. An Authority may terminate its participation in this Memorandum at any time by giving at least 30 days' prior written notice to each other Authority.

13.2. A notice of termination will not affect the other Authorities as signatories to the Memorandum.

13.3. This Memorandum will continue in effect until the expiration of 30 days after any Authority gives written notice to the other Authorities of its intention to terminate its cooperation under the Memorandum. If any Authority gives such notice, this Memorandum will continue to have effect with respect to all requests for assistance that the Authority made, or information provided, before the effective date of notification.

13.4. In the event of termination of this Memorandum information obtained under it will remain confidential and fall to be dealt with under paragraphs 9.1 to 9.4

14. AMENDMENT

14.1. No waiver, amendment of or alteration to the Memorandum shall be effective unless made in writing and executed following agreement at a plenary session of the GIFCS.

15. EXECUTION OF MEMORANDUM

15.1. This Memorandum shall govern the exchange of information, co-operation and consultation among Authorities that are signatories to it as of the date of execution by the respective Authority.

15.2. Those Authorities which can comply with the terms of this Memorandum and in respect of whom it shall be considered effective and in force shall execute Appendix A

15.3. Those Authorities which cannot currently sign Appendix A but which intend to work towards the enactment of legislation and procedures shall execute Appendix B and that signature will evidence the intention to execute Appendix A within 3 years.

15.4. To execute Appendix A notification must first be made before a plenary of the GIFCS.

16. ACCESSION TO THE MEMORANDUM

16.1 Any Authority which becomes a member of the GIFCS after December 2016 may execute this Memorandum in accordance with the provisions of paragraph 15.

16.2 Any such Authority acknowledges that from the date of executing Appendix A in accordance with the terms of paragraph 15.2 the reciprocity in this Memorandum will be extended by the said Jurisdiction to all other signatories to Appendix A.

17. PUBLICATION

17.1 The GIFCS will publish this Memorandum on its website.

17.2 The GIFCS will keep an updated list of signatories to the Memorandum on its website.

APPENDIX A

IN WITNESS whereof each of the Authorities has executed the Memorandum by their duly authorised Signatories on the date set out below and in signing warrant that their legislation allows them to give full effect to the Memorandum.

SIGNED this 8th May, 2017.

BRITISH VIRGIN ISLANDS FINANCIAL SERVICES COMMISSION

Electronically Signed by:
Kenneth Baker
Deputy Managing Director-Regulation

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APPENDIX C

List of contact persons for each Authority

British Virgin Islands Financial Services Commission

P.O. Box 418
Haycraft Building
Pasea Estate
Road Town
Tortola VG 1110
British Virgin Islands
Website: www.bvifsc.vg
Contact: Robert Mathavious
Title: Managing Director/CEO
Phone: +1 284 494 1324
E-mail: commissioner@bvifsc.vg

Alternate: Kenneth Baker
Title: Deputy Managing Director- Regulation
Phone: +1 284 494 1324
E-mail: bakerk@bvifsc.vg