

MEMORANDUM OF UNDERSTANDING

The Superintendency of Banks of Panama at Samuel Lewis Avenue, HSBC Tower, 18th Floor in Panama City (hereinafter referred to as the Home Supervisor) and the Superintendent of Banking of the Turks and Caicos Islands' Financial Services Commission at Front Street, Grand Turk, Turks and Caicos Islands, British West Indies (hereinafter referred to as the Host Supervisor).

WHEREAS:

- (a) The Host Supervisor is responsible, under the Governor of the Turks and Caicos Islands (herein after "the TCI") and the Permanent Secretary of the Ministry Finance for the supervision of banking business carried on in or from within the TCI, pursuant to the provisions of the Banking Ordinance of the TCI (hereinafter "the TCI Ordinance").
- (b) The Home Supervisor is responsible for the supervision of banking business carried on in or from within Panama in accordance with Decree Law No. 9 of February 26 of 1998 (hereinafter "the Banking Law of Panama").
- (c) A bank subjected to the consolidated supervision of the Home Supervisor (the "Panama parent"), has established a company registered under the Companies Ordinance of the TCI as an exempt company in the TCI ("the TCI subsidiary"), to operate under Overseas Banking License.
- (d) The TCI subsidiary is a wholly owned subsidiary of the Panama parent, a company which:-
 - (i) is, incorporated in accordance to Panamanian Laws and whose head office is established in Panama.
 - (ii) is, by virtue of a banking license granted under the Banking Law of Panama, entitled to carry on banking business in or from within the Panama; and
 - (iii) is subject to the supervision of the Home Supervisor, in accordance with the provisions of the Banking Law of Panama.
- (e) The Governor of the TCI has granted TCI subsidiary an Overseas Banking License.
- (f) The purpose of this Memorandum of Understanding ("the MOU") is:-

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- (i) To promote the integrity of the financial services market by providing a framework for co-operation, increase mutual understanding and to the extent permitted by the laws and practices of the Turks and Caicos Islands
- (ii) This MOU does not modify or supersede any laws or regulatory requirements in force in, or applying to the Turks and Caicos Islands or to the Republic of Panama.
- (iii) Whilst the signatories will use their best endeavors to meet the terms of the MOU, nothing contained herein creates a duty on one signatory to assist the other. Nor does the MOU create any rights which are enforceable by a signatory or a third party.
- (iv) The signatories propose to ensure the timely and confidential processing of all request for assistance.

SCOPE

- (v) The signatories propose to ensure that mutual assistance is provided for prudential supervision of the financial services industry and for the obtaining of information relating to market oversight and the protection of each other's markets against fraudulent transactions.
- (g) The Host Supervisor signs this MOU with the full knowledge and agreement of the Governor who has certain regulatory and supervisory powers and duties under the TCI Ordinance.

Have reached the following understanding with regard to the Panamanian owned subsidiary established in the TCI.

1. COMPETENCE

1.1 THE HOME SUPERVISOR

1.1.1 It is the responsibility of the Home Supervisor, inter alia, to ensure compliance by all banks licensed under the Panama banking laws (including the Panama parent) with all legal and regulatory obligations and accordingly impose the corresponding sanctions upon non-compliance with such obligations.

1.1.2 The Home Supervisor supervises all banks headquartered in Panama, verifying the operational procedures of such banks and monitoring the soundness of their financial and capital requirements within the following groups of supervisory activities:

- (i) the monitoring of the safety and soundness of the banks;

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- (ii) surveillance of the efficiency and financial integrity of the banking sector; and
- (iii) verification of the procedures adopted by banks with respect to their compliance with such rules and regulations as are contained in the Panama banking laws or as may be specified by the Home Supervisor as well as other applicable legislation in force.

1.1.3 The Home Supervisor subjects all banks headquartered in Panama, including the Panama parent, to on-site and off-site inspections carried out by the Home Supervisor on a regular basis ("Extraordinary Inspections"), as may be required.

1.2 THE HOST SUPERVISOR

1.2.1 The Host Supervisor is responsible for the regulation and supervision, inter alia, of all banks licensed in the TCI in accordance with the provisions of the TCI Ordinance and regulations made thereunder and is responsible for maintaining a general review of banking practices in the TCI.

2. PRINCIPLES

2.1 This Memorandum of Understanding is based on the following principles:

- (i) mutual trust and reciprocity between the parties;
- (ii) that strict confidentiality will be observed by all staff members with access to information shared under this MOU;
- (iii) that both parties will use their best efforts to ensure the full implementation of this Memorandum of Understanding; and
- (iv) the clear understanding that this Memorandum of Understanding does not;
 - (a) modify or supersede any laws in force in, or applying to, The TCI or Panama; or
 - (b) create any rights enforceable by one signatory against the other or any obligations to or rights in any third parties.

2.2 Without derogating from the regulatory and supervisory powers of the Governor of the TCI or the Host Supervisor, the Home Supervisor accepts responsibility for the supervision of the Panama parent, and any subsidiary, overseas branches

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and/or cross border banking business of the Panama parent on a consolidated basis.

- 2.3 Any reference to the Panama parent shall, where appropriate, include a reference to any subsidiary (other than the TCI subsidiary), any overseas branches and any other cross border banking business carried on by the Panama parent.

3. COOPERATION

- 3.1 Cooperation shall include contacts between the parties during the subsistence of this MOU as well as in relationship to the supervision of ongoing activities. The parties will also inform each other of any substantial changes in the respective legislation that may affect the supervision of the Panama parent or The TCI subsidiary.

- 3.2 The Host Supervisor will notify the Home Supervisor, without delay, of any applications for approval to establish offices in the TCI, submitted by Panamanian petitioners. For the purpose of this MOU, the person submitting the application shall be deemed to be a Panamanian petitioners when:-

- (h) The applicant is a Panamanian Bank or any other corporate with a license to provide non-bank financial services in Panama, or
- (ii) The applicant is a corporate whose stock capital is owned substantially by Panamanian nationals.

- 3.2 The parties shall use their best efforts to respond to request for relevant information relating to any material regulatory concern. The term "material regulatory concern" encompasses a matter relating to:-

- (i) whether the operations of the Panama parent or the TCI subsidiary are conducted in a safe and sound manner and in conformance with applicable prudential standards;
- (ii) whether there has been evidence of material violation of the law by the Panama parent or the TCI subsidiary;
- (iii) evidence of events or circumstances that would have a material adverse effect on the financial stability of the Panama parent or of The TCI subsidiary.

- 3.3 The Home Supervisor undertakes to provide to the Host Supervisor information that this is


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- (i) adequately required by the Host Supervisor to facilitate a determination as to whether the TCI subsidiary continues to meet the requirements for licensing in the Host territory; and
- (ii) regarding the extent and nature of its supervision of the TCI subsidiary and the Panama parent.

Information to be provided under this clause may be provided either upon request or at such times as the Home Supervisor and the Host Supervisor may mutually agree.

3.4 ON SITE – INSPECTIONS AND PROCEDURES

- 3.4.1 The parties agree that cooperation is particularly useful in assisting the Host Supervisor carrying out on-site inspections of the TCI subsidiary.
- 3.4.2 The Home Supervisor shall ask the Host Supervisor for permission to be a part of the on-site inspection of the TCI subsidiary. It shall provide written explanation of the specific purpose of its inspection and the aspects of the operations of the TCI subsidiary that it wishes to inspect. The Home Supervisor will submit the names of persons and the positions that they hold and who would comprise part of the team that would carry out the inspection. In the event the Home Supervisor wishes to use the services of persons who are not in its employ (e.g. independent external auditors) it shall inform the Host Supervisor according and similarly provide a list of names.
- 3.4.3 Prior to the actual inspection, the parties will meet and the Home Supervisor shall submit its purpose and details of its inspection which must be satisfactory to the Host Supervisor. Any such inspection shall not entitle the Home Supervisor to have access to the name, title or number of an account of a depositor of the TCI subsidiary or to the settlor, name or title of a trust unless the Home Supervisor can satisfy the Host Supervisor that the voluntary consent of such account holder or settlor or trustee as the case may be has been obtained and a copy of such written consent that has been shown to the Host Supervisor.
- 3.4.4 The Host Supervisor must be satisfied that any information obtained during an on-site Inspection of the TCI subsidiary or otherwise:-
 - (a) will only be used for the purpose of the Home Supervisor's regulatory functions
 - (b) is not related directly or indirectly to the imposition, calculation and collection of taxes or the enforcement of exchange control regulations.

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(c) Is subject to adequate legal restrictions on further disclosure.

3.4.5 The sharing of the confidential supervisory information pursuant to this MOU is done in reliance on the foregoing assurance and shall not constitute a waiver of any legally cognizable privilege as to any person other than the parties to this MOU.

3.4.6 In providing confidential written material pursuant to this MOU, the Host Supervisor shall mark every page of the material provided with a legend reading as follows:-

“CONFIDENTIAL – PROVIDED TO THE SUPERINDENCY OF BANKS OF PANAMA BY THE SUPERINTENDENT OF BANKING OF THE TURKS AND CAICOS ISLANDS PURSUANT TO THE MEMORANDUM OF UNDERSTANDING DATED...”

3.4.7 With regard to an on-site inspection, the Host supervisor may appoint members of the Home Supervisor’s inspection team as examiners may appoint under the provisions of the TCI Ordinance. The Host Supervisor shall appoint members of the staff of the Financial Services Commission to the Inspection team during any on-site Inspection. No inspection shall commence until the Home Supervisor is satisfied that the appointments referred to above has been made.

3.4.8 All the of the Home Supervisor members will be required to give a confidentiality undertaking the form attached hereto as Appendix 1 prior to the commencements of any on-site inspection.

3.4.9 The Home Supervisor shall within 2 months of the date of the on-site inspection or such longer period as the parties may agree, submit a report of its part of the inspection to the Host Supervisor, provided however that if in the course of the inspection the Home Supervisor uncovers some serious irregularity it shall immediately inform the Host Supervisor.

3.4.10 The Home Supervisor hereby agrees to inform the Host Supervisor promptly of any regulatory action taken by the Home Supervisor against the Panama parent as a result of an on-site inspection.

3.5 In connection with the ongoing supervision of their cross-border establishments, the parties undertake to use their best endeavors to:

(i) provide relevant information to their counterpart regarding material developments, supervisory concerns or money laundering prevention in respect to the operations of the cross-border establishments;

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- (ii) provide relevant information to their counterpart regarding material developments or supervisory concerns in respect to the operations of the cross-border establishments;
- (iii) respond to request for information on their respective national regulatory systems and inform each other about major changes, in particular those which have a significant bearing on the activities of cross-border establishments.
- (iv) Inform their counterpart of material administrative penalties imposed, or other formal enforcement action taken, against a cross-border establishment; and
- (v) In general, facilitate the transmission of information that might be required to assist with the supervisory process.

ADDITIONAL INFORMATION

4.1 The parties shall provide each other with the names of the officials responsible for banking regulation and supervision within their respective jurisdictions, providing details of the nature and extent of the duties and responsibilities of each official together with official's address, telephone and fax numbers. The parties will promptly notify each other of any changes with respect to the above information. The relevant information as the date of this MOU is annexed hereto as Appendix 2.

4.2 The Host Supervisor agrees to use its best efforts to provide the Home Supervisor from time to time with updated list of banks licensed in the TCI.

5. DENIAL OF REQUEST FOR INFORMATION

5.1 The provision of, or requests for, information under this MOU may be denied:-

- (i) where compliance would require the Host or Home Supervisor to act in a manner that would violate the law of its jurisdiction,
- (ii) on the grounds of public interest on national security, or
- (iii) when compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where the prejudice to the investigation is likely to outweigh the adverse effects of denying the information.

6. IMMUNITY

6.1 By executing this MOU, neither party waives any immunity from suit to which it may be entitled nor submits to the jurisdiction of any court that would not have been court of competent jurisdiction if this MOU had not been executed.

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7. TERM

- 7.1 This MOU shall continue in effect for a period of one year from the date that it is made and shall automatically be renewed each year, subject to modification by the mutual consent of the parties, provided however that the provisions relating to confidentiality set forth in Appendix 1 shall not be terminated with respect to any information provided or actions taken under this MOU, in the event that this MOU is terminated.

8. MEETINGS

- 8.1 The parties may hold periodical meetings to discuss matters relating to the supervision of the Panama parent or the TCI subsidiary and for the reviewing of aspects relating to the implementation of this MOU. Such meetings shall constitute the appropriate forum for the discussion of any problem and/or identifying possible solutions, as well as to resolve serious supervisory problems concerning the Panama parent or the TCI subsidiary.

9. LANGUAGE

- 9.1 The parties shall correspond with each other in English or Spanish.

10. AMENDMENT OF THE MOU

- 10.1 This MOU may be amended to include subsidiaries of parents subjected to the supervision of the Home Supervisor, which may be in the future be licensed to operate in the TCI under an Oversea Banking License.

11. TERMINATION OF THE MOU

- 11.1 If the Host Supervisor determines in its absolute discretion that there has been any fundamental breach of the terms hereof, it may immediately treat the MOU as terminated. Likewise, if the Home Supervisor determines in its absolute discretion that there has been any fundamental breach of this MOU, it may treat the same as immediately terminated.
- 11.2 The Host Supervisor and the Home Supervisor may also terminate this MOU on giving written notice to the party to that affect.

12. CONTACTS

- 12.1 Any communication or contact with respect to this Memorandum of Understanding shall be addressed, unless otherwise specified, to:-

- (i) in the case of the Host Supervisor

The Superintendent of Banking
Financial Services Commission
P.O Box 173
Grand Turk
Turks and Caicos Islands
British West Indies

Tel: 1 649 946 2791
Fax: 1 649 946 2891

(ii) in the case of the Home Supervisor

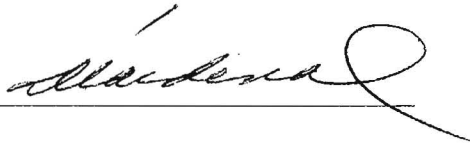
Superintendencia de Bancos
Apartado 0832-2397 WTC
Panamá, República de Panamá

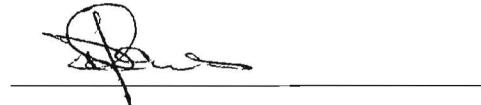
Tel: (507) 206-7800
Fax: (507) 264-9741

Signed today October 22, 2001

The Superintendent of Banks of Panama

The Superintendent of Banking of the
Turks and Caicos Islands





APPENDIX 1

(Paragraph 3.6.8 and 7.1)

CONFIDENTIALITY UNDERTAKING

I do hereby undertake that I whether as a result of any on-site inspection approved by the Superintendent of Banking of the Turks and Caicos Islands or otherwise relating to Hemisphere Bank Inc. Ltd. licensed pursuant to the Banking Ordinance of the Turks and Caicos Islands.

By signing this undertaking I understand that any breach of its terms or any unauthorized disclosure of such information may amount to an offence under the Banking Ordinance and/or the Confidential Relationship Ordinance of the Turks and Caicos Islands.

Dated this day of 2001.



APPENDIX 2

Financial Services Commission
P.O. Box 173
Front Street
Grand Turk
Turks and Caicos Islands
British West Indies

Contact Persons: Dulcie James
Superintendent of Banking
Acting Superintendent, Financial Service Commission

Tel No: 1 649 946 2791

Fax No: 1 649 946 2821

E-mail [fsc @ tcipay.tc](mailto:fsc@tcipay.tc)

Home tel. No: 1 649 946 1442

Language Spoken: English

Alternate: Dennis Swann
Superintendent of Companies, Managers and Trustees

Tel No: 1 649 946-2791

Fax No: 1 649 946-2821

E-mail: fsc@tcipay.tc

Language Spoken: English

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**Superintendencia de Bancos
Apartado Postal 0832-2397
Panamá, República de Panamá**

Contact Persons: Delia Cárdenas
Superintendent of Banking

Tel No: 1 507 206 7800

Fax No: 1 507 264-9422

E-mail: superintendencia @ superbancos.gob.pa

Language Spoken: Spanish, English

Alternate: Dario Forero
Director of Banking Supervision

Tel No: 1 507 206-7944

Fax No: 1 507 264-9874

E-mail: superintendencia @ superbancos.gob.pa

Language Spoken: Spanish, English

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