

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION
AND
THE FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO

MAY 2014

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PREAMBLE

This Memorandum of Understanding outlines the co-operative efforts between the Trinidad and Tobago Securities and Exchange Commission ('TTSEC') and the Financial Intelligence Unit of Trinidad and Tobago ('FIU') (together referred to as 'the Authorities'). The Authorities recognise that greater co-ordination and co-operation would facilitate the investigation and prosecution of persons suspected of money laundering and terrorist financing and criminal activity related to money laundering and terrorist financing.

1. DEFINITIONS

“Authorities” means the FIU and the TTSEC;

“FIU” means the Financial Intelligence Unit of Trinidad and Tobago, established by Section 3 of the Financial Intelligence Unit of Trinidad and Tobago Act, No. 11 of 2009 (as amended);

“FIUTTA” means the Financial Intelligence Unit of Trinidad and Tobago Act, No. 11 of 2009 (as amended);

“Laws and Regulations” means the primary or secondary legislation made by Parliament of Trinidad and Tobago;

“Person” means a natural or legal person, body corporate, unincorporated entity or association, including corporations and partnerships;

“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;

“SA 2012” means the Securities Act of 2012 of the Republic of Trinidad and Tobago;

“TTSEC” means the Trinidad and Tobago Securities and Exchange Commission, as governed by the Securities Act No. 17 of 2012.

2. GENERAL PROVISIONS

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 relating to their respective functions and duties. It is anticipated that co-operation will be achieved primarily through written requests, ongoing consultations, periodic meetings, training events and other practical arrangements as may be developed by the Authorities from time to time.

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

2.3 This Memorandum does not create any legally binding obligation upon the Authorities.

2.4 The provisions of this Memorandum do not give rise 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.

2.5 The Authorities agree that nothing in this Memorandum modifies in any way each Authority's ability to carry out its duties and responsibilities.

2.6 The Authorities intend periodically to review the functioning and effectiveness of the co-operation arrangement with a view to expanding or altering the scope or operation of this Memorandum should that be judged to further the intent of the Authorities.

3. LEGISLATIVE AUTHORITY

3.1 The responsibility of the TTSEC to consult, cooperate with, provide information to the Financial Intelligence Unit arises from the co-operative functions pursuant to Section 19 of the SA 2012.

3.2 Under Section 16 of the FIUTTA the FIU may co-operate and liaise with any person who is able to assist in the provision of information relevant to an analysis of a suspicious transaction or suspicious activity report. The FIU is also empowered to request information from inter alia, a public authority. Further, pursuant to Regulation 22 of the FIU Regulations, the FIU may share or request financial information from agencies, authorities, and persons when co-operating and liaising pursuant to Section 16 of the FIUTTA.

4. SCOPE

4.1 To the extent permitted by existing Laws and Regulations governing the Authorities, each Authority may exchange information that it has access to or that may come into its possession that is relevant to the functions and duties performed by the other Authority.

4.2 Without prejudice to the generality of the foregoing, the scope of this Memorandum includes the following:-

- (i) Implementing measures which seek to ensure that regulated institutions and persons meet required standards pertaining to anti-money laundering and combating of terrorism financing (AML/CFT) through the exchange of information as permitted by the relevant Laws and Regulations;
- (ii) Information related to enforcement action commenced by either Authority against persons or institutions for breach of AML/CFT Laws and Regulations;
- (iii) Sanctions imposed on any person or institution for breaches related to the AML/CFT Laws and Regulations;

- (iv) Information relating to the number or quality of Suspicious Transaction or Activity Reports (STR/SARs) filed by a regulated institution in preparation for an onsite examination;
- (v) Any other matters agreed upon between the Authorities from time to time that are permitted by the relevant Laws and Regulations governing the Authorities.
- (vi) Any other type of request for the purpose of gathering information and in discharging the duties and responsibilities of the Requesting Authority and as permitted by the Laws and Regulations governing the Requested Authority.

5. EXECUTION OF REQUESTS FOR INFORMATION AND ASSISTANCE

5.1 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 under Clause 11.

5.2 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 or information to the specified Laws, and Regulations;
- (e) Whether information is likely to be disclosed to any third party and to the fullest extent possible, the name(s) of the party or parties;

- (f) Whether any other authority, governmental or non-governmental is cooperating with the Requesting Authority.
- (g) An indication of any special precautions that should be taken in collecting the information;
- (h) The Laws and Regulations that may have been violated and that relate to the subject matter of the request; and
- (i) Written assurances that the information requested shall not be used for any other purpose than those specified in the request and will not be disclosed without prior consent.

5.3 The Authorities should advise each other of any changes to the relevant contact persons listed under Clause 11 as soon as reasonably practicable.

5.4 In cases of emergency/urgent requests the Requesting Authority will provide the Requested Authority with all the relevant factors concerning the information sought including the reasons for the emergency situation. The requests for information may be made by electronic facsimile or electronic mail provided such communication is under confidential cover, and thereafter confirmed in writing within five business days.

5.5 Requests for information and assistance are to be determined on a case by case basis save and except that each Authority must comply with the Laws of Trinidad and Tobago.

5.6 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.

5.7 As a general practice, the Requested Authority should reply within 30 business days with the information requested or where additional information is necessary, should communicate with the Requesting Authority and outline what additional information is needed before any information request can be fulfilled.

6. USE OF INFORMATION

6.1 The principle use of information by the Requesting Authority under this Memorandum shall be used to exercise its functions including, but not limited to, its ability to gather information about areas of interest or concern and to determine whether any Person is in compliance with or breach of applicable Laws and Regulations.

6.2 All information obtained or generated by the Requested Authority under this Memorandum should be presumed confidential and non-public unless disclosure has been specifically authorised and/or consented to by the Requested Authority.

6.3 Subject to Clause 7 the Requesting Authority may not use information furnished for any purpose other than that identified in Clause 5.2(a) without the written consent of the Requested Authority.

6.4 If the Requesting Authority wants to use the information obtained for any purpose other than that stated in Clause 5.2(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.

6.5 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 and 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 5.2(a) or 6.3.

6.6 In the event that the Requested Authority opposes such use as referred to in Clause 6.4 and 6.5 the Requested Authority and Requesting Authority may consult to determine the appropriate terms, if any, under which the information may be so used.

7. CONFIDENTIALITY

7.1 The Authorities agree to treat as confidential, to the extent permitted by applicable laws, all non-public information provided pursuant to this Memorandum. Nothing in this Memorandum waives or alters any provisions of any applicable laws relating to non-public information.

7.2 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 and Regulations place limitations on the use and disclosure of non-public information obtained pursuant to this Memorandum.

7.3 The Authorities will not share information received pursuant to this Memorandum with any third party without notice and consent of the other Authority.

7.4 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 what 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.

7.5 The Requesting Authority should ensure that non-public information is not inadvertently disclosed.

8. RIGHTS OF REQUESTED AUTHORITY

8.1 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, Regulations or other obligations 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.
- (d) The requests are related to and may prejudice ongoing or pending judicial proceedings.

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

8.3 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.

9. UNSOLICITED INFORMATION

9.1 An Authority may provide, to the extent permitted by the Laws and Regulations of the jurisdiction, without prior request, another Authority with any information that will assist that other Authority in the performance of its duties and functions.

9.2 An Authority may where permissible notify the other Authority if it becomes aware of a violation or potential violation of the Laws and Regulations which fall under the other Authority's purview.

9.3 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.

10. COSTS ASSOCIATED WITH REQUESTS

10.1 In order to facilitate the exchange of information referred to in Clause 2, each Authority will assume the costs related to the fulfillment of requests and the transmission of information.

11. POINTS OF CONTACT

11.1 The Authorities designate the following persons as their point(s) of contact for issues related to the interpretation or application of this Memorandum and any authorisations, approvals or notices of requested modifications under this memorandum:-

(i) With respect to the TTSEC, the General Counsel of the Division of Legal Advisory and Enforcement, or that official's designee.

(ii) With respect to the FIU, the Director of the Financial Intelligence Unit of Trinidad and Tobago, or that official's designee.

12. REVIEW AND AMENDMENT

12.1 This Memorandum may be amended, from time to time by mutual consent to ensure that it remains current and is kept consistent with any changes in legislation and other relevant developments.

12.2 Any amendment or revision shall be effective when made in writing and executed by the Authorities.

13. EFFECTIVE DATE

13.1 This Memorandum will become effective upon signature by the Authorities and shall remain effective unless terminated by either Authority.

14. TERMINATION

14.1 Either Authority may terminate this Memorandum upon 30 days written notice to the other Authority. Following termination, all information that was provided subject to the Memorandum shall remain confidential pursuant to its terms.

14.2 Unauthorized use or disclosure of information by one Authority in a manner contrary to the provisions of this Memorandum and without the consent of the other Authority shall be grounds for the immediate termination of this Memorandum by any means of communication.

Agreed to and signed in duplicate this 21st day of May 2014 for and on behalf of:-

TTSEC

FIU



Patrick Watson

Chairman



Susan Francois

Director

