

CAYMAN ISLANDS



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**Memorandum of Understanding between the Cayman Islands  
Monetary Authority (CIMA) and the Superintendency of Banks of  
the Republic of Panama (SBP) on the Exchange of Information for  
Co-operation and Consultation**

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**WHEREAS:**

- A.** The Cayman Islands Monetary Authority (hereinafter “CIMA”) and the Superintendency of Banks of the Republic of Panama (hereinafter “SBP”) and together hereinafter referred to as “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 in their respective countries.
- B.** The Authorities further acknowledge the importance of compliance with relevant international standards established by international standard setting bodies such as the Basel Committee on Banking Supervision (BCBS) and the Financial Action Task Force (FATF).
- C.** The arrangements outlined below are intended to enhance the existing working relationship, mutual trust and reciprocity between the Authorities.

**1. DEFINITIONS**

**“Requesting Authority”** means the Overseas Regulatory Authority or the Superintendency of Banks, within the terms of s. 2 of the Monetary Authority Law (2003 Revision) and Law Decree No. 9 of February 26th, 1998, making a request under this Memorandum of Understanding;

**“Requested Authority”** means the Authority to whom a request is made pursuant to paragraph 6 of this Memorandum of Understanding;

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

**“Banking Institutions”** mean the institutions and persons regulated and supervised by either of the Authorities;

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

**“Memorandum of Understanding”** means the arrangements for both mutual co-operation and exchange of information between regulatory bodies;

**“Registered Person”** means any person carrying on banking or other banking business activities requiring registration by either of the Authorities in order to carry out those functions, who may or may not be subject to individual registration but who is subject to the operative legislation within the jurisdiction.

**2. INTENTION**

- 2.1 This Memorandum of Understanding sets forth a statement of intent of the Authorities to establish a framework for mutual assistance and to facilitate the exchange of information between the Authorities 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 This Memorandum of Understanding is based on the determination of the parties to use their best efforts to cooperate towards the achievement of the supervision, on a consolidated basis, of the Parent company and the subsidiary or branch in the Requested Jurisdiction;
- 2.3 On the basis of this MOU, and without derogating from the regulatory and supervisory powers of the Requested Authority, the Requesting Authority accepts responsibility for the supervision of the parent company, the subsidiary or branch in the Requested Jurisdiction and any other subsidiaries, overseas branches and/or cross border banking business of the parent company on a consolidated basis.
- 2.4 Any reference to the parent company shall, where appropriate, include a reference to any subsidiaries, any overseas branches and any other cross border banking business carried on by the parent company.
- 2.5 The Authorities intend to provide one another with assistance under this Memorandum of Understanding to the full extent permitted by the laws, regulations and rules of their respective jurisdictions.
- 2.6 This Memorandum of Understanding will serve to promote the integrity, efficiency and financial soundness of Banking Institutions by improving the effective regulation, enhancing the supervision of cross-border transactions, and preventing fraudulent and other prohibited practices in Republic of Panama and the Cayman Islands.
- 2.7 This Memorandum of Understanding does not:
- (a) create any binding legal obligations upon the Authorities;
  - (b) modify or supersede any laws in force in, or applying to, Cayman Islands or Panama;
  - (c) create any rights enforceable by one signatory against the other or any obligations to or rights in any third parties.
- 2.8 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 the Memorandum of Understanding, and to keep each other informed of developments in connection therewith.

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- 2.9 The provisions of this Memorandum of Understanding 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 of Understanding
- 2.10 The Authorities will use reasonable effort to provide each other, as permitted by the laws of their respective jurisdictions, with any information that they discover which leads to a suspicion of a breach or anticipated breach of rules or laws in the jurisdictions of the Authorities.

### **3. SCOPE**

- 3.1 Through the machinery set up by this Memorandum of Understanding, 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 of their respective jurisdictions.
- 3.2 In terms of this general theme, the scope of this Memorandum of Understanding includes the following:
- (a) enforcement of the laws, regulations and rules relating to banking or other banking activities subject to regulation by the Authorities in their respective jurisdictions.
  - (b) regulation and supervision of banks.;
  - (c) promoting and securing the fit and proper qualities of registered persons and the promotion of high standards of fair dealing and integrity of their conduct of business; and
  - (d) Assisting in the carrying out of responsibilities for the prevention of and enquiries relating to money laundering under the laws of their respective jurisdictions including the proper implementation of anti-money laundering procedures by Banking Institutions.
  - (e) any matters agreed upon between the Authorities from time to time.

### **4. COOPERATION**

- 4.1 Cooperation shall include contacts between the parties during the subsistence of this MOU, as well as in relation 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 Parent company, branch or subsidiary in the Requested Jurisdiction.

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4.2 The Requested Authority will notify the Requesting Authority, without delay, of any applications for approval to establish offices in the Requested Jurisdiction, submitted by applicants from the Requesting Jurisdiction. For the purposes of this MOU, the person submitting the application shall be deemed to be applicants from the Requesting Jurisdiction when:

- i) the applicant is a Bank from the Requesting Jurisdiction or any other corporation with a license to provide non-bank financial services in the Requesting Jurisdiction, or
- ii) the applicant is a corporation whose stock capital is owned substantially by nationals from the Requesting Jurisdiction.

4.3 The parties shall use their best efforts to respond to requests for relevant information relating to any material supervisory concern. The term “material supervisory concern” encompasses a matter relating to:

- i) whether the operations of the Parent company, branch or subsidiary in the Requested Jurisdiction 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 Parent company, branch or the subsidiary in the Requested Jurisdiction;
- iii) evidence of events or circumstances that would have a material adverse effect on the financial stability of the Parent company or of the subsidiary in the Requested Jurisdiction.

4.4 The parties shall use their best efforts to respond to requests for relevant information relating to the prevention of money laundering, pursuant to the laws in force in Panama and the Cayman Islands. Consequently, the Requested Authority undertakes to provide to the Requesting Authority information that is:

- i) adequately required by the Requesting Authority to ascertain compliance of the anti-money laundering legislation in force in the Requesting Jurisdiction;
- ii) adequately required by the Requesting Authority to ascertain whether the Parent company has avoided compliance of the anti-money laundering legislation in the Requesting Jurisdiction by means of the subsidiary in the Requested Jurisdiction.

It is understood by the Parties that any information obtained under this MOU, establishing the infringement of the anti-money laundering provisions in force in either country, shall be forwarded to the corresponding competent authorities.

- 4.5 The Requesting Authority undertakes to provide to the Requested Authority information that is:
- i) adequately required by the Requested Authority to facilitate a determination as to whether the branch or subsidiary in the Requested Jurisdiction continues to meet the requirements for licensing in the Host territory; and
  - ii) regarding the extent and nature of its supervision on a consolidated basis of the branch or subsidiary in the Requested Jurisdiction and the Parent company;
  - iii) adequately required to facilitate a determination as to whether the branch or subsidiary in the Requested Jurisdiction meets compliance with the anti-money laundering legislation of the Requesting Jurisdiction.

Information provided under this clause may be provided either upon request or at such times as the Requesting Authority and the Requested Authority may mutually agree.

## **5. UNDERTAKING OF INSPECTION VISITS**

- 5.1 The Requesting Authority may undertake or accompany inspection visits on Banking Institutions having business operations in or from the jurisdiction of the Requested Authority. Inspection visits will take place in accordance with the Requested jurisdiction.
- 5.2 The parties agree that cooperation is particularly useful in assisting each other in carrying out on-site inspections of the subsidiary in the Requested Jurisdiction, which will be carried out jointly by the parties.
- 5.3 The Requesting Authority shall contact the Requested Authority to inform the latter of an intention to carry out an on-site inspection. It shall provide a written explanation of the specific purpose of the inspection and the aspect of the operations.
- 5.4 The Requesting Authority will submit the names of persons and the positions that they hold who will comprise the team that will carry out the inspection. In the event that the Requesting Authority wishes to use the services of persons who are not in its employ (eg. independent external auditors) it shall inform the Requested Authority accordingly and similarly provide a list of names).
- 5.5 Prior to the actual inspection, the parties may meet and the Requesting Authority shall submit an inspection program satisfactory to the Requested Authority. Any such inspection program shall not entitle the Requesting Authority to have access to the name or title of an account of a depositor of the subsidiary in the Requested Jurisdiction or to the settlor, name or title of a trust unless the Requesting Authority can satisfy the Requested Authority that the voluntary consent of such account holder or settlor or trustee as the case

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may be has been obtained and a copy of such written consent has been shown to the Requested Authority. The Requesting Authority is to facilitate in the review of the inspection program for purposes of compliance with the Requested Authority's anti-money laundering regime.

5.6 The Requesting Authority hereby undertakes that any information obtained during an on-site inspection of the subsidiary or branch in the Requested Jurisdiction, or otherwise, will only be used for the purposes of prudent consolidated supervision. If the Requesting Authority receives any legally enforceable demand for reports of inspection or for information disclosed pursuant to this MOU, the Requesting Authority will promptly notify the Requested Authority and will cooperate to preserve the confidentiality of such report or information as the case may be.

5.7 In providing confidential written material pursuant to this MOU, the Requested Authority shall mark every page of the material provided with a legend reading as follows:

“CONFIDENTIAL – PROVIDED TO THE (NAME OF THE REQUESTING AUTHORITY) BY (NAME OF THE REQUESTED AUTHORITY) PURSUANT TO THE MEMORANDUM OF UNDERSTANDING DATED ....”

5.9 To facilitate the on-site inspection, the Requested Authority agrees to seek the appointment of members of the Requesting Authority's inspection team as examiners. The Requested Authority may in its absolute discretion seek the appointment of any member or members of its staff to be a part of the inspection team of the Requesting Authority during any on-site inspection. No inspection shall commence until the Requesting Authority receives confirmation that the appointments referred to above have been made.

5.10 All members of the Requesting Authority's inspection team will be required to give a confidentiality undertaking in the form attached hereto as “Schedule 1” prior to the commencement of any on-site inspection.

5.11 The Requesting Authority shall within two (2) months of the date of the on-site inspection or such longer period as the parties may agree, submit a report of the inspection to the Requested Authority, provided however that if in the course of the inspection the Requesting Authority uncovers some serious irregularity it shall immediately inform the Requested Authority.

5.12 The Requesting Authority hereby agrees to inform the Requested Authority promptly of any regulatory action taken by the Requesting Authority against the Parent company as a result of an on-site inspection;

5.13 If the Requested Authority carries out an on-site inspection of the branch or subsidiary in the Requested Jurisdiction under the Banking Law of the Cayman Islands or Panama, it



may invite the Requesting Authority to nominate members of its staff to be a part of the inspection team of the Requested Authority. The Requested Authority will, within two (2) months of the date of any such inspection, or such longer period as the parties may agree, submit a report of the inspection to the Requesting Authority.

- 5.14 All members of the inspection team will be required to give an undertaking of confidentiality prior to the commencement of any on-site inspection.
- 5.15 In the course of carrying out an inspection, an inspection team as referred to in 5.1, 5.4, 5.10 and 5.14 must include a member of the Requested Authority's staff.

## **6. CROSS-BORDER ESTABLISHMENTS**

- 6.1 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;
  - ii) respond to requests 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;
  - iii) inform their counterpart of material administrative penalties imposed, or other formal enforcement action taken, against a cross-border establishment; and
  - iv) in general, facilitate the transmission of information that might be required to assist with the supervisory process.

## **7. REQUESTS FOR ASSISTANCE OR INFORMATION**

- 7.1 This Memorandum of Understanding does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that the existing Authorities observe procedures in the jurisdiction of each Authority for the obtaining of such information.
- 7.2 To facilitate communication and ensure continuity in the co-operation between the Authorities, each Authority designates the contact persons set forth in "Appendix A" hereto for communications under this Memorandum of Understanding.
- 7.3 A Requesting Authority will make requests for assistance in writing addressed to the contact officer of the Requested Authority.

- 7.4 The request will include -
- (a) a description of both the subject matter of the request and the purpose for which the Requesting Authority seeks the assistance or information a description of the assistance, documents or information sought by the Requesting Authority;
  - (b) the legal provisions concerning the matter that is the subject matter of the request and the relevance of the requested information to the specified laws or regulatory requirements;
  - (c) whether any other authorities, governmental or non-governmental, are co-operating 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; and the desired period of time for the reply;
  - (d) In urgent circumstances, the Requested Authority will accept a request for assistance and will expedite to the extent possible a reply thereto by summary procedures or by means of communication other than the exchange of letters. Such urgent communications must be confirmed in writing as prescribed above by the contact person set out in Appendix A within five business days.

## **8. EXECUTION OF REQUESTS**

- 8.1 Where the Requested Authority is satisfied in accordance with this Memorandum of Understanding and the laws governing the Requesting Authority that the assistance should be given, the Requested Authority will provide information held in the files of the Requested Authority;
- 8.2 Each request will be assessed on a case by case basis by the Requested Authority to determine whether information can be provided under the terms of this Memorandum of Understanding.

## **9. DENIAL OF REQUESTS FOR INFORMATION**

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

- i) where compliance would require the Requested or Requesting Authority to act in a manner that would violate law in its jurisdiction;
- ii) on the grounds of public interest or 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.

**10. UNSOLICITED INFORMATION**

Where one Authority has information that will assist the other Authority in the performance of its regulatory functions, the former may provide such information, or arrange for such information to be provided spontaneously, to the extent permitted by the laws of its respective jurisdiction even though the other Authority has made no request. The terms and conditions of this Memorandum of Understanding will apply if the providing Authority specifies that it is passing the information under this Memorandum of Understanding.

**11. PERMISSIBLE USES OF INFORMATION**

- 11.1 Any assistance or information provided under the terms of this Memorandum of Understanding shall be used by the recipient only for the purpose of enabling the Requested Authority to exercise regulatory functions.
- 11.2 The Requesting Authority may not use information furnished for any purpose other than that identified in terms of paragraph 7.4 without the consent of the Requested Authority.
- 11.3 If the Requesting Authority wants to use the information obtained for any purpose other than that stated in terms of paragraph 7.4 the Requesting Authority must notify the Requested Authority of its intention and provide the Requested Authority with an opportunity to consent to, or oppose such use.
- 11.4 Where the Requesting Authority believes that sharing confidential information with a third party is necessary, it must inform the Requested Authority of the third parties interest in this information and it must provide the Requested Authority with the opportunity to consent to, or oppose such use.
- 11.5 The Requesting Authority may consult with the Requested Authority concerning the reasons for the objection if the Requested Authority opposes such use.

**12. CONFIDENTIALITY**

- 12.1 The Authorities will, to the full extent permitted by the laws, regulations and rules of their respective jurisdictions, keep confidential:-
  - (a) any request for assistance or information pursuant to this Memorandum of Understanding;
  - (b) any information received or provided pursuant to this Memorandum of Understanding; and

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- (c) any matter arising during the operation of this Memorandum of Understanding, including consultations and unsolicited assistance.
- 12.2 The Requesting Authority shall not disclose the assistance or information obtained pursuant to this Memorandum of Understanding to third parties without the prior consent of the Requested Authority.
- 12.3 Notwithstanding the provisions of paragraphs 9.1 and 9.2, the confidentiality provisions of this Memorandum of Understanding shall not prevent the Authorities from informing the law enforcement or regulatory bodies in its jurisdiction of the request or from passing information received pursuant to a request provided that:-
- (a) such agencies or bodies have responsibility for prosecuting, regulating or enforcing rules or laws falling within the scope of this Memorandum of Understanding; or
  - (b) the purpose of passing on such information to such an agency or body falls within the scope of this Memorandum of Understanding, and
  - (c) an undertaking has been obtained from the recipient by the Requested Authority that it will maintain the confidentiality of the information.
- 12.4 The Authorities confidential treatment of assistance and information will continue when either Authority gives notice of its intent to cease co-operation under this Memorandum of Understanding. 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 of Understanding.
- 12.5 Strict confidentiality will be observed by all staff members with access to information shared under this MOU.

**13. RIGHTS OF REQUESTED AUTHORITY**

- 13.1 The Requested Authority may deny requests for assistance under the Memorandum of Understanding -
- (a) where the request would require the Requested Authority to act in a way that would violate the laws of the jurisdiction of the Requested Authority;
  - (b) where the request is not in accordance with the provisions of this Memorandum of Understanding;

- (c) where corresponding assistance would not be given in the country of or territory of the Requesting Authority;
  - (d) where the request involves a breach of law or other requirement which has no close parallel in the country or territory of the Requested Authority or involve the assertion of a jurisdiction not recognised in the country or territory of the Requested Authority; or
  - (e) on the grounds of public interest.
- 13.2 Where the Requested Authority denies a request for assistance, or where assistance is not available under the law of the jurisdiction of the Requested Authority, the Requested Authority will provide the reasons why it is not granting the assistance. The Authorities will then consult pursuant to Clause 11.
- 13.3 The Authorities recognise that they intend nothing in the Memorandum of Understanding to either limit or enhance the powers of the Authorities under the laws of their respective jurisdictions to investigate or gather information or to take measures otherwise than as provided in the Memorandum of Understanding to obtain information, whether or not concerning a request under the Memorandum of Understanding.

#### **14. CONSULTATION**

- 14.1 The Authorities will consult with each other to improve the operation of the Memorandum of Understanding and resolving any matters that may arise including but not limited to -
- (a) matters of mutual interest to enhance co-operation and to protect investors by ensuring the stability, efficiency, and integrity of the financial services industry in their respective jurisdictions,
  - (b) the co-ordination of the supervision of Banking Institutions; and
  - (c) the administration of the laws, regulations and rules of their respective jurisdictions.

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.

- 14.2 The Authorities will consider the need for additional measures for the exchange of investigation, enforcement, supervisory and surveillance information in the administration and enforcement of the laws, regulations and rules concerning Banking 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 of Understanding.

- 14.3 The Authorities may take practical measures as may be necessary to facilitate the implementation of the Memorandum of Understanding. As such, the Authorities may amend, relax or waive any of the terms of the Memorandum of Understanding.

**15. COSTS OF INVESTIGATION**

The cost generated by virtue of the execution of the Agreement with respect to the sharing of information of the head office in the Requesting Authority and in the cross borders establishments in the Requested Jurisdiction, would be assumed by each of the parties. Information would be transmitted by any way which guarantees that the information be submitted expeditiously and securely.

**16. TERMINATION OF THE MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding will continue in effect until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the Memorandum of Understanding. If either Authority gives such notice, this Memorandum of Understanding will continue to have effect with respect to all requests for assistance that the Authorities made before the effective date of notification until the Requesting Authority terminates the matter for which it requested assistance.

**17. EFFECTIVE DATE**

This Memorandum of Understanding will be effective from the date of its signing by the Authorities.

**18. LANGUAGE**

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

SIGNED this 31st day of May 2004

***FOR AND ON BEHALF OF  
THE CAYMAN ISLANDS MONETARY AUTHORITY***

**Mrs. Cindy Scotland**  
Managing Director

**Mr. Michael Austin**  
Chairman

***FOR AND ON BEHALF OF  
SUPERINTENDENCY OF BANKS OF THE REPUBLIC OF PANAMA***

**Delia Cárdenas**  
Superintendent of Banks

**“APPENDIX A”**

**DESIGNATED CONTACT OFFICERS**

**The Cayman Islands Monetary Authority**

PO Box 10052 APO

Elizabethan Square

Grand Cayman

Cayman Islands

**For all supervision purposes:**

Managing Director

Mrs. Cindy Scotland

Tel: 345 914 1500

Fax: 345 949 2532

E-mail: [c.scotland@cimoney.com.ky](mailto:c.scotland@cimoney.com.ky)

**For all enforcement activities:**

Mr. R.J. Berry

Tel: 345 914-1640

Fax: 345 949 2532

**Superintendency of Banks of Panama of the Republic of Panama**

P.O. Box 0832-2397 WTC

Panama, Republic of Panama

Delia Cárdenas

Superintendent of Banks

Tel: 507 206 7890

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Email: [superintendencia@superbancos.gob.pa](mailto:superintendencia@superbancos.gob.pa)

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**“SCHEDULE 1”**

**CONFIDENTIALITY UNDERTAKING**

I, \_\_\_\_\_, do hereby undertake that I shall keep confidential all information obtained by me or which comes into my possession whether as a result of any on-site inspection approved by the (name of Requested Authority) or otherwise relating to \_\_\_\_\_, licensed pursuant to the Banking Law of \_\_\_\_\_, and that any such information shall only be used for the purpose of the consolidated supervision of \_\_\_\_\_.

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 Law of the (name of the Requested Authority).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2004