

CAYMAN ISLANDS



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**Memorandum of Understanding between the Cayman Islands
Monetary Authority (“CIMA”) and the Bermuda Monetary
Authority (“BMA”) 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 Bermuda Monetary Authority (hereinafter “BMA”) 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, The International Association of Insurance Supervisors (IAIS), the International Organisation of Securities Commissions (IOSCO) and the Financial Action Task Force (FATF).
- C. The arrangements outlined below are intended to enhance the existing working relationship between the Authorities.
- D. The Cayman Islands Monetary Authority (“the Authority”) was established as a body corporate under The Monetary Authority Law, which was brought into force on 1st January, 1997. The Authority is responsible for the supervision of, *inter alia*, banks and trust companies, money services providers, mutual funds, securities, company managers, insurers and their agents.
- E. Bermuda Monetary Authority is responsible for the supervision of banks and other deposit-taking institutions under the Banks & Deposit Companies Act 1999, of insurance entities under the Insurance Act 1978, of investment business, recognized investment exchanges and clearing houses under the Investment Business Act 2003, of trust businesses under the Trusts (Regulation of Trust Business) Act 2001, as well as for the classification of collective investment schemes pursuant to the Bermuda Monetary Authority Act (Collective Investment Schemes) (Classification) Regulations 1998.

1. DEFINITIONS

“**Requesting Authority**” means the Authority making a request pursuant to 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;

“**Financial Institutions**” mean the institutions and persons regulated and supervised by either of the Authorities, and

“**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.

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“Memorandum of Understanding” means this statement of intent in which are detailed the arrangements for mutual cooperation and exchange of information between the Authorities.

“Registered Person” means any person whose fitness and properness is subject to supervisory review because of their association with a Financial Institution.

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 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.
- 2.3 This Memorandum of Understanding will serve to promote the integrity, efficiency and financial soundness of Financial Institutions by improving effective regulation, enhancing the supervision of cross-border transactions, and preventing fraudulent and other prohibited practices in Bermuda and the Cayman Islands.
- 2.4 This Memorandum of Understanding does not create any legal obligations upon, or enforceable rights for, the Authorities.
- 2.5 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.
- 2.6 The provisions of this Memorandum of Understanding do not create any right for 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
- 2.7 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 The Authorities through this Memorandum of Understanding, express their willingness and commitment 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.

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- 3.2 This Memorandum of Understanding addresses the promotion of mutual assistance and information exchange in respect of:
- (c) Assisting in the discovery of and taking of action against unlawful activities and practices contrary to international standards subscribed to by the Authorities in relation to activities they regulate.
 - (a) enforcement of the laws, regulations and rules relating to banking or other financial activities subject to regulation by the Authorities in their respective jurisdictions.
 - (b) regulation and supervision of Financial Institutions;
 - (d) 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
 - (e) 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 Financial Institutions.
 - (f) any matters agreed upon between the Authorities from time to time.

4. UNDERTAKING OF INSPECTION VISITS

- 4.1 The Requesting Authority may undertake or accompany inspection visits on Financial Institutions having business operations in or from the jurisdiction of the Requested Authority. Inspection visits will take place in accordance with the laws of the Requested jurisdiction.
- 4.2 All members of the inspection team may be required to give an undertaking of Confidentiality, pertaining to individual customers, prior to the commencement of any on-site inspection.
- 4.3 In the course of carrying out an inspection, an inspection team as referred to in 4.1 and 4.2 may include a member of the Requested Authority's staff.

5. REQUESTS FOR ASSISTANCE OR INFORMATION

- 5.1 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.
- 5.2 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.

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- 5.3 A Requesting Authority will make requests for assistance in writing addressed to the contact officer of the Requested Authority.
- 5.4 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;
 - (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, bodies or entities 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 information to the specified laws or regulatory requirements;
 - (e) 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;
 - (f) 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.

6. EXECUTION OF REQUESTS

- 6.1 Where the Requested Authority is satisfied that assistance may be given in accordance with this Memorandum of Understanding and the laws governing the Requesting Authority, the Requested Authority will;
- (a) Provide information held in the files of the Requesting Authority;
 - (b) Obtain information, including statements and testimony, and gather documents in accordance with the laws and procedures in the jurisdiction of the Requested Authority.
- 6.2 Notwithstanding any other provision of this Memorandum of Understanding any person providing information or documents as a result of a request made under this Memorandum of Understanding will be entitled to all applicable rights and privileges of the laws in the jurisdiction of an Authority. Assertions regarding rights and privileges arising exclusively under the laws applicable in the jurisdiction of an Authority will be preserved for consideration by Courts in that jurisdiction.

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- 6.3 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.

7. 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. Unless an Authority providing information otherwise specifies in writing, the terms and conditions of the Memorandum of Understanding will apply to information passed which is within the scope of this Memorandum of Understanding.

8. PERMISSIBLE USES OF INFORMATION

- 8.1 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 Requesting Authority to exercise regulatory functions, including the conduct of civil or administrative investigations and proceedings to enforce the laws, regulations or rules of the Requesting Authority as specified in the request.
- 8.2 The Requesting Authority may not use information furnished for any purpose other than that identified in terms of paragraph 5.4(a) without the written consent of the Requested Authority.
- 8.3 If the Requesting Authority wants to use the information obtained for any purpose other than that stated in terms of paragraph 5.4(a) 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.
- 8.4 Where the Requesting Authority believes that sharing confidential information with a third party is necessary, it shall, subject to any legal prohibition inform the Requested Authority of the third party's interest in this information and it shall provide the Requested Authority with the opportunity to consent to, or oppose such use.
- 8.5 The Requesting Authority may consult with the Requested Authority concerning the reasons for the objection if the Requested Authority opposes such use.

9. CONFIDENTIALITY

- 9.1 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;

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- (b) any information received or provided pursuant to this Memorandum of Understanding; and
 - (c) any matter arising during the operation of this Memorandum of Understanding, including consultations and unsolicited assistance.
- 9.2 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.
- 9.3 Notwithstanding the provisions of paragraphs 8.1, 8.2, 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.
- 9.4 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.

10. RIGHTS OF REQUESTED AUTHORITY

- 10.1 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;

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(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.

10.2 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.

10.3 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.

11. CONSULTATION

11.1 The Authorities will consult with each other to improve the operation of this Memorandum of Understanding and to resolve any matters that may arise hereunder, including but not limited to -

(a) matters of mutual interest to enhance co-operation and to protect the public by ensuring the stability, efficiency, and integrity of the financial services industry in their respective jurisdictions,

(b) the co-ordination of the supervision of Financial 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.

11.2 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 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 of Understanding.

11.3 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.

12. COSTS OF INVESTIGATION

If it appears that the Requested Authority will incur substantial costs in responding to a request for assistance under this Memorandum of Understanding, the Requested Authority may, as a condition to executing the requests, require the Requesting Authority to contribute to its cost in an amount agreed upon by the Authorities.

13. 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.

14. EFFECTIVE DATE

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

SIGNED at this 30th day of June 2005

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

*Cindy Scotland
Managing Director*

***FOR AND ON BEHALF OF
BERMUDA MONETARY AUTHORITY***

*D. Munro Sutherland
Superintendent Banking Trust and Investments*

“APPENDIX A”

DESIGNATED CONTACT OFFICERS

THE CAYMAN ISLANDS MONETARY AUTHORITY

PO Box 10052 APO
Elizabethan Square
Grand Cayman
Cayman Islands

For all supervision purposes:

Mrs. Cindy Scotland
Managing Director

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For all enforcement activities:

Mr. R.J. Berry
Head of Compliance

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Fax: 345 949 2532
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BERMUDA MONETARY AUTHORITY

Burnaby House
26 Burnaby Street
Hamilton HM 11
Bermuda

For all supervision purposes:

Ms. Cheryl-Ann Lister, CFA, MBA
Chairman and CEO

Tel: 441 278 0202
Fax: 441 292 7471
Email: clister@bma.bm

For all supervision of insurance entities:

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Supervisor of Insurance

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For supervision of other financial services business:

Mr. D. Munro Sutherland
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For enforcement action:

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