



FMA

Finanzmarktaufsicht
Liechtenstein

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE BRITISH VIRGIN ISLANDS FINANCIAL SERVICES COMMISSION

AND

THE FINANCIAL MARKET AUTHORITY LIECHTENSTEIN

CONCERNING THEIR CO-OPERATION

IN THE FIELD OF BANKING AND FINANCIAL SUPERVISION

A. Preliminary Provisions

1. The British Virgin Islands Financial Services Commission (“**BVIFSC**”) and the Financial Market Authority Liechtenstein (“**FMA**”), both hereinafter referred to jointly as the “**Authorities**” and individually as “**Authority**”, express their willingness to co-operate on the basis of mutual confidence and understanding and agree to base their co-operation in the field of supervision of relevant institutions on the principles and procedures outlined in this memorandum of understanding (“**MoU**”). This MoU serves as the basis for co-operation between the Authorities. This MoU is legally not binding and does not establish any rights or obligations enforceable by the parties hereto or third parties, nor does it affect or supersede any applicable laws, regulations or statutes or any provisions adopted in other memoranda of understanding.
2. The BVIFSC is an independent statutory body corporate established under the Financial Services Commission Act, 2001 (“**FSC Act**”). The functions of the BVIFSC under section 4 of the FSC Act include the supervision and regulation of licensees under applicable legislation, monitoring and regulation of financial services business carried on in or from within the BVI, monitoring compliance with anti-money laundering legislation, maintaining contact and developing relations with foreign regulatory authorities and associations of regulatory authorities, providing legal and regulatory assistance to foreign regulatory authorities and promoting a safe and sound financial services environment in the BVI. The BVIFSC is responsible for the supervision of, inter alia, banks, trust companies and money services providers, insurers and insurance intermediaries, funds and persons providing investment business services, and insolvency practitioners.
3. The FMA is an independent public institution with legal personality established by the Act on Financial Supervision published in the Liechtenstein Law Gazette on 18 August 2004 (“**FMAG**”). Pursuant to art. 5 FMAG the FMA is responsible for the supervision of, inter alia, banks and investment firms, e-money institutions, payment services providers, professional trustees and trust companies. The FMA ensures the stability of the financial market in Liechtenstein, customer protection, the avoidance of misuse and compliance with, and implementation of generally accepted international standards.

B. Definitions

4. For the purpose of this MoU, the following terms shall mean:

- a. **Branch:** an organizational unit of a Supervised Institution incorporated in the territory of one Authority which is established in the territory of the other Authority;
- b. **Cross-Border Establishment:** a Representative Office, Branch or Subsidiary of a Supervised Institution incorporated in Liechtenstein and operating in the British Virgin Islands or vice versa;
- c. **Home Country Authority:** the Authority responsible for the supervision on a consolidated basis of a Supervised Institution;
- d. **Host Country Authority:** the Authority of the jurisdiction in which a Supervised Institution has a Cross-Border Establishment;
- e. **Other Country:** the jurisdiction in which a Supervised Institution has a Cross-Border Establishment;
- f. **Representative Office:** an organizational unit, other than a Branch, of a Supervised Institution incorporated in the territory of one Authority which is established in the territory of the other Authority;
- g. **Subsidiary:** a Supervised Institution incorporated in the territory of one Authority which is controlled by a parent Supervised Institution incorporated in the territory of the other Authority;
- h. **Supervised Institution:** a bank, investment firm (in the case of a firm incorporated in Liechtenstein, an investment firm pursuant to the Liechtenstein Law of 21 October 1992 on Banks and Investment Firms), e-money institution, payment services provider, professional trustee, trust company or fiduciary services provider being subject to the supervision of the BVIFSC or the FMA.

C. Sharing of information

- 5. The Authorities intend to co-operate in the banking and financial supervision of Cross-Border Establishments within their respective jurisdictions. The scope of co-operation shall encompass in particular the notification, the licensing (issuance, change and revocation) as well as the ongoing supervision of Cross-Border Establishments.
- 6. Co-operation implies: (i) the provision of information on Cross-Border Estab-

lishments in or from the respective Other Country, unsolicited or upon specific request, (ii) assistance with regard to on-site inspections and audits, (iii) collaboration in the execution of supervisory measures and, more generally, (iv) consultation and discussion aiming at resolving any supervisory problems.

D. Licensing

7. If a Supervised Institution established in one of the respective countries applies to the Authority in the Other Country for a license to open a Branch or a Representative Office, or if a Subsidiary applies for a license, the Host Country Authority shall inform the Home Country Authority without delay of such an application and shall consult the Home Country Authority before granting an authorization to such a Cross-Border Establishment.
8. In the process of establishing a Branch or a Representative Office within the territory of the other Authority, the Home Country Authority shall inform the Host Country Authority about the programme of operation and type of business envisaged by the Branch or the Representative Office, the amount of own funds, the relevant prudential ratios and the past performance of the Supervised Institution, as well as about deposit guarantee schemes, money laundering regulations and data protection management in the home country. In addition, the Home Country Authority shall inform the Host Country Authority whether the Supervised Institution is fully subject to and complies with the domestic banking and financial regulations, and whether it is expected, in light of its administrative structure and internal controls, to run the Cross-Border Establishment in an orderly, prudent and proper manner.
9. Prior to the actual appointment of managers of Cross-Border Establishments, the Home Country Authority shall disclose to the Host Country Authority, on request and without delay, any piece of available information which might be useful in assessing the ability and professional skills of the candidates and shall also provide any information which might give rise to doubts as to the fitness and properness of the prospective managers of the Cross-Border Establishments.

E. Co-operation concerning ownership control

10. The Authorities shall consult together before granting a license to a Cross-Border Establishment of a Supervised Institution licensed in the home jurisdiction or when assessing any acquisition of a qualified participating interest, as

defined by their respective national laws, in a domestic Supervised Institution, by a Supervised Institution within the jurisdiction of the other Authority.

F. Ongoing supervision and corrective actions

11. The Authorities shall inform each other to the extent reasonable about any event which has the potential to endanger the stability of Supervised Institutions having Cross-Border Establishments in the respective Other Country. They shall also notify each other on material administrative penalties, which they have imposed on, or any other material action, which they have taken against such a Cross-Border Establishment as a Host Country Authority, or the parent institution as a Home Country Authority.
12. The Authorities shall discuss any significant information on Supervised Institutions having Cross-Border Establishments in the Other Country, which might be relevant to the other Authority. Relevant matters are in particular: concerns about financial soundness of an institution (failure to meet capital adequacy or other financial requirements, significant losses, rapid decline in profits or a deterioration in profitability), concerns relating to compliance or control procedures, concerns arising from supervisory visits and on-site inspections, prudential interviews or reports from and communications with an institution or other regulatory body, concerns arising from late or inaccurate prudential returns and concerns relating to supervisory arrangements in third countries.
13. Representatives of the BVIFSC and the FMA may consult with and require clarifications from the other Authority at any time and may convene meetings deemed necessary.
14. Customer complaints in relation to Cross-Border Establishments will be dealt with by the Host Country Authority which will inform the Home Country Authority about any related information obtained and deemed to be relevant for the Home Country Authority. Since the Authorities are not authorized to settle civil law disputes, customer complaints are only reviewed in relation to the fitness and properness of the management, potential violations of financial market regulations and detrimental developments in the financial services sector which may give rise to supervisory measures.

G. Financial crime

15. Without preventing the competent Authorities to exercise their duties and legal

obligations, the Authorities shall co-operate closely when they identify suspected financial crime activities in the Supervised Institutions. For the purposes of this MoU, financial crimes shall include, in particular, money laundering, unauthorized banking and all violations of laws on the financial markets.

16. The Authorities may share information, to the extent permitted under their laws, on institutions which carry out cross-border activities in the Other Country or information which could affect the home jurisdiction. In the event that the Authorities, during an examination or inspection, detect a serious criminal violation of the laws of their jurisdictions, the Authorities may be under a strict legal obligation to pass information on that violation immediately to the appropriate law enforcement authorities in their home countries. In such cases, the Authorities should inform each other of their actions.

H. Crisis situation

17. The Authorities shall inform each other without delay if they learn of any incipient crisis relating to any Supervised Institution that has Cross-Border Establishments in the Other Country.
18. In case of a Supervised Institution facing serious financial difficulties which could have a material adverse impact on its Cross-Border Establishments, the Supervised Institution's Home Country Authority will coordinate the dissemination of related information with the Host Country Authority.

I. On-site inspections

19. The Authorities agree that co-operation is particularly useful in assisting each other in carrying out on-site inspections of Cross-Border Establishments.
20. On-site inspections of Cross-Border Establishments shall be carried out by the Host Country Authority and, upon specific request, also on behalf of the Home Country Authority. The Host Country Authority shall notify the Home Country Authority as soon as possible, but, unless a shorter period is warranted in the circumstances, at least three months in advance, of any planned inspection of a Representative Office or Branch, indicating the number of inspection staff and the purpose as well as the expected duration of the inspection.
21. Should the Home Country Authority wish to inspect a Cross-Border Establishment in the host country, the procedure described in paragraph 22. shall ap-

ply.

22. The Home Country Authority shall notify, generally at least two months in advance, the Host Country Authority of its intention to carry out an on-site inspection of a Cross-Border Establishment and shall indicate the number of inspection staff and the purpose, as well as the expected duration of the inspection. The Host Country Authority shall, either:
 - carry out the inspection allowing the Home Country Authority to join;
 - or
 - carry out, if requested, the inspection on behalf of the Home Country Authority;
 - or
 - allow the Home Country Authority to carry out the on-site inspection on its own.
23. In all cases mentioned in paragraph 22. above, prior approval shall be obtained from the Host Country Authority, according to the host country's relevant legislation.
24. The Authorities shall keep each other informed of the results of inspections to the extent reasonable and in a timely manner. If a parent institution in the home country has been examined, the Home Country Authority shall provide the Host Country Authority with a summary report on the findings which bear relevance to the Cross-Border Establishment.
25. If a Cross-Border Establishment has been subject to an on-site inspection, the Host Country Authority shall provide the Home Country Authority with a summary report on the findings that bear relevance to the parent institution.

J. Official secrecy

26. Compliance with the obligation of official secrecy by all employees who receive confidential information from the other Authority in the course of their activities is a necessary condition for a successful co-operation between the Authorities. The Authorities agree that any confidential information shared on the basis of this MoU will be used for lawful supervisory purposes only.
27. To the extent permitted by law and, in particular, subject to legal obligations to pass information on criminal violations to appropriate law enforcement authorities in their home countries, the Authorities shall maintain the confidenti-

ality of all the information received through these arrangements from each other and shall not disclose any such information unless it is necessary for carrying out their supervisory responsibilities or unless they have obtained the prior written consent of the other Authority for such disclosure.

28. The Authorities shall, when receiving a legally enforceable demand for information originally received from the other Authority or acquired in the course of an on-site inspection in the other Authority's jurisdiction, promptly notify in writing the other Authority of such a request for information. For the avoidance of doubt, each Authority may deliver such information without the other Authority's consent if required under applicable laws, regulations and statutes.
29. The Authorities shall, upon request, inform each other of the conditions stipulated by their respective national laws, under which they may disclose information obtained pursuant to this Memorandum.
30. When providing confidential written material pursuant to this MoU, the Authorities shall mark material provided with a legend reading as follows:

“CONFIDENTIAL – PROVIDED
PURSUANT TO BVIFSC / FMA
MEMORANDUM OF UNDERSTANDING”

K. Technical arrangements

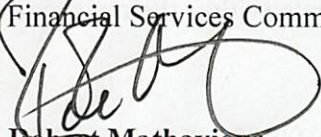
31. A request for information under this MoU shall be made in writing, in the English language, shall be addressed to the designated contact person of the Authority requested to supply information and shall be transmitted by postal service or as attachment to an e-mail. In case of emergency, requests for information and replies to such requests may be transmitted orally provided that any such requests are confirmed in writing, unless the requested Authority agrees to waive this requirement.
32. A request for information should indicate the following:
 - the subject matter of the request and the specific information requested;
 - the purpose for which the information is sought;
 - the sensitivity of the information sought; and
 - the urgency of the request, or the desired time period for the reply.
33. To facilitate practical co-operation, the Authorities shall, after this agreement enters into force, exchange written lists of contact persons for the exchange of

information, stating their names, positions, telephone, fax and e-mail connection particulars.

34. In order to enhance the quality of co-operation, representatives of the BVIFSC and the FMA shall convene regularly to discuss issues concerning Supervised Institutions which maintain Cross-Border Establishments within their respective jurisdictions.
35. The Authorities shall, upon request, advise each other on any aspect of their regulatory systems.
36. The Authorities shall, upon request, send each other any relevant lists of institutions licensed and authorized by them.
37. The BVIFSC and the FMA intend, where practicable, to promote their co-operation by means of visits for informational purposes and by short exchanges of staff for practical internships.
38. This MoU shall take effect when both Authorities have signed it and shall remain in force until either party notifies the other in writing of its wish to withdraw from the MoU. Any such action shall be subject to at least thirty (30) days advance written notice. The provisions of this Memorandum of Understanding may be amended or revised by mutual written agreement of the parties thereto.
39. The co-operation and assistance in accordance with this MoU shall continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to discontinue such co-operation and assistance. If either Authority gives such notice, the co-operation and assistance in accordance with this Memorandum shall continue with respect to all requests for assistance that were made before the effective date of notification until the requesting Authority waives its request for assistance. In the event of termination of this MoU, the information obtained thereunder shall continue to be treated confidentially.
40. The BVIFSC and the FMA undertake to revise the present MoU as may be necessary from time to time in the light of future developments in national and EU legislation and of experience gained in the supervision of their respective institutions.
41. This agreement is written in the English language in two original copies, of which each Authority shall obtain one copy.

British Virgin Islands, 3/12/2014

On behalf of the British Virgin Islands
Financial Services Commission



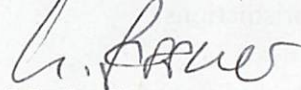
Robert Mathavious
Managing Director/CEO



Kenneth Baker
Deputy Managing Director - Regulation

Liechtenstein, 13/11/2014

On behalf of the Financial Market
Authority Liechtenstein



Mario Gassner
CEO



Rolf Brüggemann
Head of Banking Division