



MEMORANDUM OF UNDERSTANDING BETWEEN

**FINANCIAL SERVICES COMMISSION
AND FINANCIAL INVESTIGATION AGENCY**

31 January 2024

CONCERNING COOPERATION IN THE EXCHANGE OF
INFORMATION RELATED TO DUE DILIGENCE, MONEY
LAUNDERING, TERRORIST FINANCING, PROLIFERATION
FINANCING AND TO ASSIST GENERALLY IN THE
PRESERVATION OF THE REPUTATION OF THE BVI AS A
FINANCIAL CENTRE

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Preamble

- A. The Financial Services Commission (the “**Commission**”) is a corporate body established under section 3 of the Financial Services Commission Act, 2001 of the Virgin Islands, whose principal place of business is at 18 Pasea Estate Road, Pasea Estate, Tortola, Virgin Islands. The Commission’s responsibilities include the supervision and regulation of financial services business being conducted in or from within the Territory. The Commission aims to promote a safe and sound financial services environment in the Territory.
- B. The Financial Investigation Agency (the “**Agency**”) is an autonomous law enforcement agency established by the Financial Investigation Agency Act, 2003, which came into force on 1 April 2004. The Agency’s responsibilities include the prevention and detection of financial crimes, including money laundering, terrorist financing and proliferation financing. They are the competent authority whose supervisory remit covers Designated Non-Financial Businesses and Professions and Non-Profit Organisations.
- C. The Commission and the Agency desire, in a spirit of cooperation and information exchange, and within their respective legislative frameworks, to facilitate the exchange of information in an effort to assist generally in the preservation of the reputation of the Virgin Islands as a financial centre, in relation to due diligence searches and in support of any investigation, supervision or prosecution of persons, legal entities, partnerships, unincorporated associations and bodies or other legal arrangements regarding money laundering, terrorist and proliferation financing and/or any activity related to money-laundering and terrorist and proliferation financing.

1. Definitions:

In this MoU, unless the context requires otherwise:

“**Administering**” an applicable law, regulation or requirement includes enforcing the same;

“**Agency**” means the Financial Investigation Agency;

“**AML/CFT**” means anti-money laundering (AML) and countering the financing of terrorism and proliferation financing (CFT);

“**AML/CFT laws**” means anti-money laundering (AML) and countering the financing of terrorism and proliferation financing (CFT) laws;

“**Applicable Laws, Regulations and Requirements**” means any law, regulation, requirement, decisions, rules, standards, instructions or measures applicable in the Virgin Islands, and where the context permits includes:

any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;

“**Assistance**” means Assistance as defined in clause 8 of this MOU;

“**Authority**” means the Commission or the Agency, collectively referred to as the Authorities;

“**Confidential Information**” means any confidential information and/or documents obtained from either Authority including those received upon Requests, and available in the framework of their supervisory functions, the access to which is restricted and confidential per Laws of either Authority.

“**Commission**” means the Financial Services Commission of the Virgin Islands (or its successor(s)).

“**Examination**” means any examination including a compliance inspection performed by either Authority per the applicable laws and regulations.

“**Requesting Authority**” means the Authority that makes a request pursuant to this MoU.

“**Requested Authority**” means the Authority that receives a request pursuant to this MoU.

“**Emergency/Crisis Situation**” means where an Authority (or the Authorities) is seeking assistance urgently to manage a circumstance where an entity is or can reasonably be expected to pose a severe threat to the integrity of the financial system in the Authority’s jurisdiction, or where the Authority has reason to believe that a supervised entity is actively involved in facilitating money laundering, the financing of terrorism, proliferation financing or evasion of United Nations and domestic sanctions.

“**Person**” means a natural person, legal entity, partnership or unincorporated associations or bodies and any other legal person or legal arrangements.

“**Territory**” means the Virgin Islands.

2. Purpose and Principles

- 2.1 The purpose of this Memorandum of Understanding is to establish a formal and structured basis for co-operation and information exchange between the Authorities in an effort to assist in the prevention, detection, disruption and mitigation of threats to the integrity of the financial system and generally in combating money laundering and terrorist and proliferation financing, with regard to due diligence searches, and in support of any investigation, supervision or prosecution of persons suspected of money laundering, terrorist and proliferation financing and/or activities related to money-laundering and terrorist and proliferation financing.
- 2.2 This MoU facilitates the exchange of Confidential Information and Assistance in conducting inquiries or compliance inspections, to facilitate timely and effective AML/CFT supervision, to provide mutual assistance in identifying risks to the financial system of the Virgin Islands, and, where necessary, to address Emergency/Crisis Situations, especially in instances where Emergency/Crisis Situations involve supervised or regulated persons.
- 2.3 This MoU does not modify or supersede any laws or regulatory requirements in force in or applying to the Virgin Islands.
- 2.4 This MoU sets forth a statement of intent and accordingly does not create for either Authority any legally enforceable rights or obligations. This MoU does not affect any arrangements under other MoUs.
- 2.5 Without prejudice to the applicable laws and regulations and having regard to the fact that a Memorandum of Understanding cannot confer powers upon authorities which are not included in the legislation to which they are subject, the Authorities acknowledge that they may provide Confidential Information and/or Assistance under this MoU only if permitted or not prevented under Applicable Laws, Regulations and Requirements.
- 2.6 Either Authority may take measures other than those identified herein to obtain information necessary to ensure enforcement of or compliance with the Applicable Laws, Regulations and Requirements in its jurisdiction.

3. Scope

3.1. This MoU includes:

- 3.1.1. requesting and providing information (spontaneously or upon request) on any person established or connected to the Virgin Islands or persons associated with that person who are authorised, licensed, registered, recognised or otherwise regulated or supervised by either Authority or who may be a threat to the integrity of the financial system and generally in combating money laundering and terrorist and proliferation financing;
- 3.1.2. the continuous sharing of information (including statistical data) by the Authorities regarding any person established or connected to the Virgin Islands or persons associated with that person who are authorised, licensed, registered, recognised or supervised or otherwise regulated by either Authority or who may be a threat to the integrity of the financial system and generally in combating money laundering and terrorist and proliferation financing; and
- 3.1.3. any other information as agreed by the Authorities which would aid in the

fulfilment or furtherance of their mandates.

4. Confidentiality of information received and Onward Information Sharing

- 4.1. The Requested Authority will only provide Confidential Information in accordance with disclosure permitted under applicable laws in force in the Territory.
- 4.2. The Authorities will ensure that there are adequate data security measures and appropriate arrangements in place regarding the storage, transfer and control of Confidential Information.
- 4.3. The Requested Authority, prior to providing requested Confidential Information, may notify the Requesting Authority of any restrictions on the use of such information, or any special provisions that must be made for the security of the information. If the Requesting Authority cannot comply with such restrictions or provisions, it will inform the Requested Authority prior to receipt of the Confidential Information and the Requested Authority may withhold provision of the Confidential Information until or unless the Authorities are able to agree on appropriate restrictions on the use of information.
- 4.4. The Requesting Authority, and other national, regional and international regulatory or law enforcement authorities to which it transmits Confidential Information in accordance with the terms of this MOU, will treat such information as confidential, and may use Confidential Information only within their respective organisations and only in connection with their public functions.
- 4.5. Where necessary in the furtherance of the Authorities' functions and objectives, the applicable legislation permitting, either Authority may facilitate or conduct broader information sharing to other authorities in the Territory that carry out similar regulatory and/or supervisory functions, or law enforcement functions, provided that the Requested Authority has given prior written consent to such information sharing.
- 4.6. The Requesting Authority will not disclose or transmit Confidential Information received from the Requested Authority without the prior written consent of the Requested Authority, unless disclosure or transmission to another regulatory or law enforcement authority is necessary in an Emergency/Crisis Situation where prior consultation is not possible. In such a case, the Requesting Authority will promptly notify the Requested Authority that such information has been transmitted or disclosed.
- 4.7. Before sharing Confidential Information to other authorities that carry out similar regulatory and/or supervisory functions, or law enforcement functions ("Other Parties"), the Requesting Authority will ensure that the Other Parties (including members of the Authority, employees and any authorised external providers having access to Confidential Information) are able and will comply on an ongoing basis (including after termination of this MoU or a person's duties) with the confidential provisions set out in this clause 4 of the MoU and that the Confidential Information will only be used in accordance with clause 5 of this MoU, and will not be used for competitive advantage.
- 4.8. The contents of requests made, continuous or spontaneous assistance provided, and consultations carried out under this MoU are confidential. The Requested Authority may, with the Requesting Authority's written consent, disclose the contents of the request if disclosure is required to fulfill the request. Both Authorities may disclose the fact that a request was made or fulfilled, the general subject matter of the request, and the nature of the assistance provided, when doing so supports fulfillment of their

domestic responsibilities or international obligations, including, for example, reporting to the Caribbean Financial Action Task Force.

- 4.9. If an order of a court of competent jurisdiction requests or requires the Requesting Authority to disclose Confidential Information provided by the Requested Authority, the Requesting Authority will immediately notify the Requested Authority of that request or requirement prior to disclosing any information to the Court.
- 4.10. The Requested Authority will assert such appropriate legal exemptions or privileges with respect to such information as may be available. The Requesting Authority shall use its best efforts to protect the confidentiality of Confidential Information received under this MoU.
- 4.11. If the Requesting Authority is unable to resist disclosure of Confidential Information under an order of a court of competent jurisdiction or in response to any legally enforceable demand, the Requesting Authority will:
 - 4.11.1. disclose only that portion of the Requested Authority's information that the Requesting Authority's counsel advises is required to be disclosed and is not subject to privilege, and
 - 4.11.2. cooperate with the Requested Authority and otherwise use reasonable efforts to ensure that the disclosed Confidential Information receives confidential treatment following disclosure.
- 4.12. The Requesting Authority will ensure that all persons having access to or dealing with Confidential Information received from the Requested Authority (including members of the Authority, employees and any authorised external providers having access to Confidential Information), will comply with the confidential obligations set out in this MoU on an ongoing basis including after termination of their duties.
- 4.13. The Authorities will ensure that they adhere to any Applicable Laws, Regulations and Requirements to protect the personal data contained in the Confidential Information received.

5. How an Authority will use the information that it receives

- 5.1. The Requesting Authority may use Confidential Information furnished in response to a request for Assistance under this MoU for:
 - 5.1.1. the purposes set forth in the request for Assistance, including ensuring compliance with the Laws related to the request; and
 - 5.1.2. the purpose within the general framework of the use stated in the request for Assistance, including conducting an assessment or enforcement proceeding.
- 5.2. If the Requesting Authority intends to use Confidential Information furnished under this MoU for any purpose other than those stated in paragraphs 5.1.1-5.1.2, it must obtain the prior written consent of the Requested Authority.
- 5.3. The Requested Authority shall endeavour to assist the Requesting Authority, through reasonable measures, in correcting inaccurate Confidential Information if such assistance is requested by the Requesting Authority.

6. Rights of Persons Preserved

- 6.1. Any person being compelled by law or court order to provide testimony, information or documents as a result of a request made under this MoU will be entitled to all the rights and protections of the laws of the Territory.

7. General Notification Procedure and Provision of Unsolicited or Continuous Information

- 7.1. The Authorities may provide information, or arrange for information to be provided, on a voluntary and/or continuous basis, even though no request has been made.
- 7.2. The frequency, manner and content of continuous sharing are to be determined and mutually agreed by the Authorities.
- 7.3. The Agency may provide statistical information on Suspicious Activity Reports/Suspicious Transaction Reports (“SARs/STRs”) filed therewith (or any other area of mutual interest) in a format and at intervals agreed with the Commission on a voluntary and/or continuous basis.
- 7.4. Without prejudice to the requirements of clause 7.1, the Authorities agree to make all reasonable efforts to as far as practicable to promptly inform each other of any significant AML/CFT supervisory or enforcement actions regarding persons or persons associated with persons who are authorised, licensed, registered, recognised or otherwise regulated by either Authority.
- 7.5. In an Emergency/Crisis Situation, the Authorities will each endeavour to notify each other of its nature and communicate information to the other Authority as appropriate, pertaining to the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency/Crisis Situation in question.
- 7.6. To the extent permitted by Applicable Laws, Regulations and Requirements, each Authority will use reasonable efforts as far as practicable to provide the other Authority on a timely basis with any information that is in its possession or discovered which:
 - (a) gives rise to a suspicion of a potential breach of the applicable laws, regulations or requirements of the other Authority; or
 - (b) will be likely to assist in administering laws, regulations or requirements of the other Authority, if provided to it.

8. Requests for Assistance

- 8.1. If a request for Assistance is made, each Authority will use reasonable efforts to provide Assistance to the other, subject to its laws and overall policy. Assistance may include, for example:
 - (a) exchange of information, including Confidential Information, as described in clause 8.2.
 - (b) confirming or verifying Confidential Information provided to Requested Authority by the Requesting Authority;
 - (c) obtaining information held by a person within the Territory;
 - (d) discussing issues of mutual interest;
 - (e) facilitating inquiries on behalf of the Requesting Authority, including facilitating inquiries to domestic counterparts of the Requested Authority; and

- (f) conducting inspections or Examinations of supervised entities. In such cases, the representatives of the Requesting Authority may be permitted to participate in inspections or Examinations made by the Requested Authority on behalf of the Requesting Authority.

8.2. The Authorities may exchange, subject to the provisions of clause 4 and in compliance with all applicable laws and regulations, any information, including Confidential Information, legally available to them, whether directly or indirectly, including information held by supervised entities, such as, without limitation:

- (a) regulatory information;
- (b) prudential information, such as information on business activities, beneficial ownership, management, and fit and proper status;
- (c) AML/CFT information, such as internal AML/CFT procedures and policies of financial institutions, customer due diligence information, customer files, samples of accounts, transaction information and suspicious transaction reports;
- (d) Information to facilitate an assessment by a regional or international standard-setting body. For example, the FATF and IMF; and
- (e) The Authorities may agree to share any information requested continuously.

9. Procedure for Requests

9.1. Requests for the provision of Confidential Information or Assistance, including in an emergency or crisis situation, will be made in writing (including by email). Where relevant to facilitate Assistance, the Requesting Authority should specify in any written request:

- 9.1.1. a description of the facts or scenario underlying the request, including the name of the person(s) concerned and whether there is any sensitivity about the request;
- 9.1.2. the information or Assistance requested;
- 9.1.3. if information is provided by the Requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
- 9.1.4. the purpose for which the information or Assistance is sought, and why the information is likely to be relevant for the functions of the Requesting Authority. This may include an outline of the supervisory tasks connected with the subject matter of the request;
- 9.1.5. the Applicable Laws, Regulations and Requirements that may have been violated regarding the subject matter of the request;
- 9.1.6. any other information known to, or in the possession of the Requesting Authority that may assist the Requested Authority in determining whether the information or documentation to which the request relates is reasonably required to fulfill the Requesting Authority's functions;
- 9.1.7. the reasonable timeframe within which the information sought should be provided, and the priority status of the request;
- 9.1.8. to whom, if anyone, onward disclosure of information provided to the

Requesting Authority is likely to be necessary and the need-to-know and purpose such disclosure would serve;

9.1.9. if the request for Assistance is for the purpose of actual or possible enforcement action; and

9.1.10. any other matters specified by the Requested Authority and by the Applicable Laws, Regulations and Requirements in relation to the Requested Authority.

9.2. The Authorities commit to fulfilling requests for Assistance in a timely fashion, and to prioritising requests according to the urgency and gravity of the underlying matter.

9.3. The Requested Authority will confirm receipt of the request in writing within two (2) business days of receipt and will confirm whether they are in a position to process the request and the timeframe for doing so. The Requested Authority will also notify the Requesting Authority of its determination regarding the request within ten (10) business days of receipt.

9.4. In emergency or crisis situations, where the procedure for requests outlined above in paragraph 10.1 is not appropriate, a request may be made orally (by telephone or in person) in the first instance, followed by a written request within five (5) business days.

10. Assessing Requests

10.1. Each request for Assistance will be assessed on a case-by-case basis by the Requested Authority, to determine whether Assistance can be provided (either in part or in whole) under the terms of this MoU and under the applicable laws in the jurisdiction. In any case where the request cannot be fulfilled in part or in whole, the Requested Authority will consider whether there may be other Assistance that can be given by itself or by any other authority in its jurisdiction and, wherever possible, will endeavour to provide Assistance to the extent possible or an indication on where Assistance may be sought.

10.2. In deciding whether and to what extent to fulfil a request, the Requested Authority may take into account:

10.2.1. whether the request conforms (scope and terms) with this MoU;

10.2.2. whether the provision of Assistance would be disproportionate or so burdensome as to disrupt the proper performance of the Requested Authority's functions, or complying with the request may otherwise prejudice performance of those functions;

10.2.3. whether the provision of Assistance would be otherwise contrary to the public interest or the essential national interest or security of the Requested Authority's jurisdiction; and

10.2.4. any other matters specified by the laws, regulations and requirements of the Requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness).

10.3. The Authorities recognise that Assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 10.2 at the discretion of the Requested Authority. Where Assistance is denied or the Assistance is not available under Applicable Laws, Regulations and Requirements, the Requested Authority will provide reasons.

- 10.4. Where the request for Assistance outlines specific conduct that may constitute a breach of a law, regulation or requirement in both the jurisdiction of the Requesting Authority and the Requested Authority, both Authorities will consult to determine the most appropriate means for each Authority to provide Assistance.

11. Contact Points

- 11.1. The Authorities have provided in Appendix A of this MOU a list of contact points to which information or requests for information or Assistance under this MOU should be directed.

12. Costs

- 12.1. If the costs of fulfilling a request are likely to be substantial, the Requested Authority may, as a condition of providing Assistance under this MoU, require the Requesting Authority to agree to making a contribution to costs.

- 12.2. This MoU will take effect when both Authorities have signed this document. It may be amended by agreement in writing.

13. Review of this MoU and supervisory developments

- 13.1. The Authorities will keep the operation of this MoU under review and will consult when necessary, with a view to improving its operation and resolving any matters, where they arise, that hinder its operation. The Authorities will endeavour to meet regularly to discuss general supervisory developments.

- 13.2. In the event of disagreement or dispute regarding the interpretation of this MOU, the Authorities will discuss the differing interpretations and seek to find a common interpretation and resolve such dispute amicably.

14. Termination of this MoU

- 14.1. This MoU will continue to have effect until terminated by either Authority giving thirty (30) days' advance written notice to the other Authority, provided, however, that the provisions set forth in clause 4 (*Confidentiality of information received and onward information sharing*) and clause 5 (*How an authority will use the information that it receives*) remain indefinitely effective following the termination of this MoU.

Executed by the Authorities:

For the Agency

For the Commission

Errol George

**Errol George
Director**

Date: 31 January 2024

Kenneth B. Baker

**Kenneth B. Baker
Managing Director/CEO**

Date: 31 January 2024

APPENDIX A: Contact Persons

Agency

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