

**Memorandum of Understanding**

**between the**

**Cayman Islands Monetary Authority (CIMA)**

**and the**

**Malta Financial Services Authority (MFSA)**

**on the Exchange of Information  
for Co-operation and Consultation**

**February 18<sup>th</sup>, 2009**

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## WHEREAS:

- A. The Cayman Islands Monetary Authority (hereinafter "CIMA") and the Malta Financial Services Authority (hereinafter "MFSA"), together hereinafter referred to as "the Authorities", recognise the need for mutual cooperation between them 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.

## 1 DEFINITIONS

**"Requesting Authority"** means the Authority, making a request under paragraph 5 of 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 instrument of a government;

**"Financial 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"** or **"Licensed Person"** means any person carrying on banking, insurance, securities business, trust business or other activities requiring registration or licensing 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 them to better 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 fullest 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 the effective regulation, enhancing the supervision of cross-border transactions, and preventing fraudulent and other prohibited practices in Malta and the Cayman Islands.
- 2.4 This Memorandum of Understanding does not create any binding legal obligations upon 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 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
- 2.7 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 Through the machinery set up by this Memorandum of Understanding, the Authorities agree to promote and facilitate 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 objective, the scope of this Memorandum of Understanding includes the following:

- (a) 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;
- (b) enforcement of the laws, regulations and rules relating to banking or other financial activities subject to regulation by the Authorities in their respective Jurisdictions;
- (c) regulation and supervision of Financial Institutions, including banks, securities business, insurance activities, collective investment schemes, clearing and settlement activities, trust companies and trust business;
- (d) promoting and securing the fit and proper qualities of Registered or Licensed Persons and the promotion of high standards of fair dealing and integrity in their conduct of business;
- (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 and terrorist financing procedures by Financial Institutions; and
- (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, regulations and rules of the requested Authority's Jurisdiction.
- 4.2 All members of the inspection team will be required to give an undertaking of confidentiality 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 paragraphs 4.1 and 4.2 shall in all cases include at least one 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 the necessary 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.
- 5.3 A Requesting Authority will make requests for assistance in writing addressed to the contact person 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, 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 an 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 in accordance with this Memorandum of Understanding and the laws governing the Requesting Authority that the assistance should be given, the Requested Authority will:
  - (a) provide information held in the files of the Requested 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 the Requested Authority. Assertions regarding rights and privileges arising exclusively under the laws applicable in the Jurisdiction of the Requesting Authority will be reserved for consideration by Courts in that Jurisdiction.

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 Jurisdiction, even though the other Authority has made no request for information. 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.

## **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 of the information only for the purpose of enabling the recipient to exercise regulatory functions, including the conduct of civil or administrative investigations and proceedings to enforce the laws, regulations or rules of the recipient 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 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 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.

- 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;
- (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 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;
- (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 manner 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 involves 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 the Memorandum of Understanding and to resolve 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 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 investigatory, 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 make a contribution to costs in an amount agreed upon by the Authorities.

## **13. TERMINATION OF THE MEMORANDUM OF UNDERSTANDING**

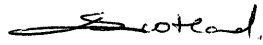
This Memorandum of Understanding will continue in effect until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the Memorandum of Understanding. If either Authority gives such notice, this Memorandum of Understanding will continue 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.

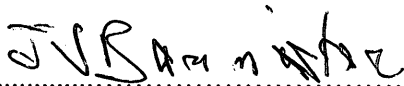
SIGNED at this 18<sup>th</sup> day of February 2009

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



.....  
Cindy Scotland  
Managing Director

**FOR AND ON BEHALF OF  
THE MALTA FINANCIAL SERVICES AUTHORITY**



.....  
Prof. Joe V. Bannister  
Chairman

## APPENDIX A

### DESIGNATED CONTACT OFFICERS

**The Cayman Islands Monetary Authority**  
P0 Box 10052  
Grand Cayman  
Cayman Islands KY1-1001

For all supervision purposes:

Cindy Scotland  
Managing Director  
Tel: (345) 244 1530  
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Email: [c.scotland@cimoney.com.ky](mailto:c.scotland@cimoney.com.ky)

For all enforcement activities:

Robert-James Berry  
Head of Compliance Division  
Tel: (345) 244 1640  
Fax: (345) 949 2532  
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**The Malta Financial Services Authority**  
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Malta

For general communications, enforcement and investigations

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For due diligence matters relating to securities:

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For due diligence matters relating to credit institutions:

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For due diligence matters relating to trustees:

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