

**MEMORANDUM OF UNDERSTANDING
WITH REGARD TO CONSOLIDATED SUPERVISION OF CROSS-BORDER
ESTABLISHMENTS**

The Superintendency of Banks of Panama and The Central Bank of The Bahamas,

Guided by principles for the effective consolidated supervision and cooperation between banking supervisors, as established in the Basle Committee's Core Principles for Effective Banking Supervision;

WHEREAS:

- (a) The Superintendency of Banks of Panama is responsible, as the Home Supervisor, for the supervision of banking business carried on in or from Panama, and, as the Home Supervisor, is responsible for the complete and consolidated supervision of the branches and subsidiaries of banks licensed pursuant to Panamanian legislation, that may be established in Panama or abroad;
- (b) The Central Bank of The Bahamas, as the Host Supervisor, for the supervision of banking business carried on in or from The Bahamas, and, as the Host Supervisor, is responsible for the complete and consolidated supervision of the branches and subsidiaries of banks licensed pursuant to Bahamian legislation, that may be established in Panama or abroad;
- (c) Certain banks subjected to the consolidated supervision of the Home Supervisor have established companies registered under the Law of the Host Supervisor to operate under Banking Licenses.
- (d) The purpose of this Memorandum of Understanding ("the MOU") is
 - (i) to set out the roles and responsibilities of the parties, and
 - (ii) to establish the basis for mutual cooperation between the parties, with respect to the supervision of Panamanian Banks and their branches and subsidiaries.

Have reached the following understanding with regard to the consolidated supervision of Panamanian owned branches and subsidiaries established in The Bahamas and Bahamian owned branches and subsidiaries established in Panama:

1. COMPETENCE

1.1 THE HOME SUPERVISOR

- 1.1.1 It is the responsibility of the Home Supervisor, *inter alia*, to ensure compliance by all banks licensed under its national laws with all legal and regulatory obligations and accordingly impose the corresponding sanctions upon non-compliance with such obligations.
- 1.1.2 The Home Supervisor supervises all banks headquartered in its jurisdiction, including the parent company, verifying the operational procedures of such banks and monitoring

the soundness of their financial and capital requirements within the following groups of supervisory activities:

- (i) the monitoring of the safety and soundness of the banks;
- (ii) surveillance of the efficiency and financial integrity of the banking sector; and
- (iii) verification of the procedures adopted by banks with respect to their compliance with such rules and regulations as are contained in the Panama banking laws or as may be specified by Home Supervisor, as well as other applicable legislation in force.

1.1.3 The Home Supervisor subjects all banks headquartered in its jurisdiction, including the parent company, to on-site and off-site inspections carried out by the Home Supervisor on a regular basis ("Extraordinary Inspections"), as may be required.

1.2 THE HOST SUPERVISOR

1.2.1 The Host Supervisor is responsible, under its national laws, for the regulation and supervision, *inter alia*, of all banks licensed in its jurisdiction in accordance with the provisions of the laws, Acts and regulations made thereunder and is responsible for maintaining a general review of banking practices in its jurisdiction.

2. PRINCIPLES

2.1 This Memorandum of Understanding is based on the following principles:

- (i) mutual trust and reciprocity between the parties;
- (ii) 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 Host Jurisdiction;
- (iii) that strict confidentiality will be observed by all staff members with access to information shared under this MOU;
- (iv) that both parties will use their best efforts to assure the full implementation of this Memorandum of Understanding; and
- (v) the clear understanding that this MOU does not:
 - (a) modify or supersede any laws in force in, or applying to, The Bahamas or Panama; or
 - (b) create any rights enforceable by one signatory against the other or any obligations to or rights in any third parties.

2.2 On the basis of this MOU, and without derogating from the regulatory and supervisory powers of the Host Supervisor, the Home Supervisor accepts responsibility for the

supervision of the parent company, the subsidiary or branch in the Host Jurisdiction and any other subsidiaries, overseas branches and/or cross border banking business of the parent company on a consolidated basis.

- 2.3 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.

3. COOPERATION

- 3.1 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 or subsidiary or branch in the Host Jurisdiction.

- 3.2 The Host Supervisor will notify the Home Supervisor, without delay, of any applications for approval to establish offices in the Host Jurisdiction, submitted by applicants from the Home Jurisdiction. For the purposes of this MOU, the person submitting the application shall be deemed to be an applicant from the Home Jurisdiction when –

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

- 3.3 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 or the subsidiary or branch in the Host 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 or the subsidiary or branch in the Host 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 or branch in the Host Jurisdiction.

- 3.4 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 in The Bahamas. Consequently, the Host Supervisor undertakes to provide to the Home Supervisor information that is

- (i) adequately required by the Home Supervisor to ascertain compliance of the anti-money laundering legislation in force in the Home Jurisdiction;

- (ii) adequately required by the Home Supervisor to ascertain whether the Parent company has avoided compliance of the anti-money laundering legislation in the Home Jurisdiction by means of the subsidiary in the Host 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.

3.5 The Home Supervisor undertakes to provide to the Host Supervisor information that is

- (i) adequately required by the Host Supervisor to facilitate a determination as to whether The subsidiary or the branch in the Host 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 subsidiary or the branch in the Host Jurisdiction and the Parent company.
- (iii) adequately required to facilitate a determination as to whether the subsidiary in the Host Jurisdiction meets compliance with the anti-money laundering legislation of the Home Jurisdiction.

Information to the provided under this clause may be provided either upon request or at such times as the Home Supervisor and the Host Supervisor may mutually agree.

3.6 On-Site Inspections and Procedures

- 3.6.1. The parties agree that cooperation is particularly useful in assisting each other in carrying out on-site inspections of the subsidiary or the branch in the Host Jurisdiction, which will be carried out jointly between the parties.
- 3.6.2. The Home Supervisor shall contact the Host Supervisor to inform the latter of an intention to carry out an on-site inspection of the subsidiary in the Host Jurisdiction. It shall provide a written explanation of the specific purpose of the inspection and the aspects of the operations of the subsidiary or the branch in the Host Jurisdiction that it wishes to inspect.
- 3.6.3. The Home Supervisor 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 Home Supervisor wishes to use the services of persons who are not in its employ (e.g. independent external auditors) it shall inform the Host Supervisor accordingly and similarly provide a list of names.
- 3.6.4. Prior to the actual inspection, the parties may meet and the Home Supervisor shall submit an inspection program satisfactory to the Host Supervisor. Any such inspection program shall not entitle the Home Supervisor to have access to the name or title of an account of a depositor of the subsidiary or the branch in the Host Jurisdiction or to the settlor, name or title of a trust unless the Home Supervisor can satisfy the Host

Supervisor that the voluntary consent of such account holder or settlor or trustee as the case may be has been obtained and a copy of such written consent has been shown to the Host Supervisor.

- 3.6.5. The Home Supervisor hereby undertakes that any information obtained during an on-site inspection of the subsidiary or branch in the Host Jurisdiction, or otherwise, will only be used for the purposes of prudent consolidated supervision. If the Home supervisor receives any legally enforceable demand for reports of inspection or for information disclosed pursuant to this MOU, the Home Supervisor will promptly notify the Host Supervisor and will cooperate to preserve the confidentiality of such report or information as the case may be.
- 3.6.6. The sharing of confidential supervisory information pursuant to this MOU is done in reliance on the foregoing assurances and shall not constitute a waiver of any legally cognizable privilege as to any person other than the parties to this MOU.
- 3.6.7. In providing confidential written material pursuant to this MOU, the Host Supervisor shall mark every page of the material provided with a legend reading as follows:-
- "CONFIDENTIAL – PROVIDED TO THE (SUPERINTENDENCY OF BANKS OF PANAMA) BY (THE CENTRAL BANK OF THE BAHAMAS) PURSUANT TO THE MEMORANDUM OF UNDERSTANDING DATED ..."**
- 3.6.8. To facilitate the on-site inspection, the Host supervisor agrees to seek the appointment of members of the Home Supervisor's inspection team as examiners. The Host Supervisor 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 Home Supervisor during any on-site inspection. No inspection shall commence until the Home Supervisor receives confirmation that the appointments referred to above have been made.
- 3.6.9. All members of the Home Supervisor's inspection team will be required to give a confidentiality undertaking in the form attached hereto as Appendix 1 prior to the commencement of any on-site inspection.
- 3.6.10. The Home Supervisor 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 Host Supervisor, provided however that if in the course of the inspection the Home Supervisor uncovers some serious irregularity it shall immediately inform the Host Supervisor.
- 3.6.11. The Home Supervisor hereby agrees to inform the Host Supervisor promptly of any regulatory action taken by the Home supervisor against the Parent company as a result of an on-site inspection.
- 3.6.12. If the Host Supervisor carries out an on-site inspection of the subsidiary in the Host Jurisdiction under the Banking Law of The Bahamas, it may invite the Home Supervisor to nominate members of its staff to be a part of the inspection team of the Host Supervisor. The Host Supervisor will, within two (2) months of the date of any such inspection, submit a report of the inspection to the Home Supervisor.

- 3.7 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 consolidated supervision.

4. ADDITIONAL INFORMATION

- 4.1 The parties shall provide each other with the names of the officials responsible for banking regulation and supervision within their respective jurisdictions, providing details of the nature and extent of the duties and responsibilities of each official together with the official's address, telephone and fax numbers. The parties will promptly notify each other of any changes with respect to the above information. The relevant information as at the date of this MOU is annexed hereto as Appendix 2.
- 4.2 The Host Supervisor agrees to use its best efforts to provide the Home Supervisor from time to time with updated list of banks licensed in the Host Jurisdiction.

5. DENIAL OF REQUESTS FOR INFORMATION

- 5.1 The provision of, or requests for, information under this MOU may be denied-
- (i) where compliance would require the Host or Home Supervisor 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.

6. IMMUNITY

- 6.1 By executing this MOU, neither party waives any immunity from suit to which it may be entitled nor submits to the jurisdiction of any court that would not have been a court of competent jurisdiction if this MOU had not been executed.

7. TERM

7.1 This MOU shall continue in effect for a period of one year from the date that it is made and shall automatically be renewed each year, subject to modification by the mutual consent of the parties, provided however that the provisions relating to confidentiality set forth under clause 3 shall not terminate with respect to any information provided or actions taken under this MOU, in the event that this MOU is terminated pursuant to clause 11.

8. MEETINGS

8.1 The parties may hold periodic meetings to discuss matters relating to the supervision of the Parent company or The subsidiary in the Host Jurisdiction and for the reviewing of aspects relating to the implementation of this MOU. Such meetings shall constitute the appropriate forum for the discussion of any problem and/or identifying possible solutions, as well as to resolve serious supervisory problems concerning the Parent company or the subsidiary or branch in the Host Jurisdiction.

9. LANGUAGE

9.1 The parties shall correspond with each other in English and Spanish.

10. AMENDMENT OF THE MOU

10.1 This MOU may be amended, if necessary, to include other Banking Subsidiaries of parents subjected to the consolidated supervision of the Home Supervisor, which may be in the future be licensed to operate in The Bahamas under a Restricted Banking License.

11. TERMINATION OF THE MOU

11.1 If the Host Supervisor determines in its absolute discretion that there has been any fundamental breach of the terms hereof, it may immediately contact the Home Supervisor for consultation regarding the alleged infringement. In the event any fundamental breach of the terms of the MOU is determined following the consultation with the Home Supervisor, the Host Supervisor may prohibit any further on-site inspections by the Home Supervisor. Likewise, if the Home Supervisor determines in its absolute discretion that there has been any fundamental breach of this MOU that may compromise the inspection that is being carried out, it may immediately contact the Host Supervisor for consultation regarding the alleged infringement. In the event any fundamental breach of the terms of the MOU is determined following the consultation with the Host Supervisor, the Home Supervisor shall remove members of the inspection team from the Host Jurisdiction.

11.2 The Host Supervisor and the Home Supervisor may also terminate this MOU after three (3) months following the written notice to the party to that effect.

12. CONTACTS

12.1 Any communication or contact with respect to this Memorandum of Understanding shall be addressed, unless otherwise specified, to –

(i) in the case of the Central Bank of The Bahamas:

Mr. Michael Foot
Inspector of Banks and Trust Companies
Central Bank of The Bahamas
P O Box N 4868
Nassau, Bahamas

Tel: (242) 302 2642
Fax: (242) 356 3919

(ii) In the case of the Superintendency of Banks of Panama:

Superintendencia de Bancos
P.O. Box 0832-2397 WTC
Panamá, República de Panama

Tel: (507) 206-7800
Fax: (507) 264-9741

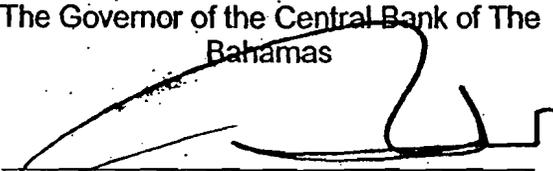
Signed in PANAMA & BAHAMAS on the 22 day of November A.D.,
Two Thousand and Four (2004).

The Superintendent of Banks of Panama



Delia Cardenas

The Governor of the Central Bank of The
Bahamas



Julian W. Francis

APPENDIX 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 Host Supervisor) or otherwise relating to _____ licensed pursuant to the Banking Law of The Bahamas and that any such information shall only be used for the purpose of the consolidated supervision of _____.

The Superintendencia de Bancos de Panama undertakes not to disclose or release to any third party any information or documents provided to it by the Central Bank of The Bahamas, whether during the course of an on-site inspection or otherwise, without the prior written consent of the Central Bank of The Bahamas.

The Superintendencia de Bancos de Panama further undertakes not to use any information provided by the Central Bank of The Bahamas pursuant to the terms of this Memorandum in criminal proceedings against any person providing the information.

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 Bahamas.

Dated this _____ day of _____ 2004.

for and on behalf of the Superintendencia de Bancos de Panama

APPENDIX 2

**Central Bank of The Bahamas
Frederick and Shirley Streets
P O Box N 4868
Nassau Bahamas**

Contact Person: Mr. Michael Foot
Inspector of Banks & Trust Companies

Tel. No.: 242 302 2615

Fax No.: 242 3563909

E-mail: MDFoot@centralbankbahamas.com

Languages spoken: English

Alternate: Mrs. Cassandra Nottage
Manager, Bank Supervision Department

Tel. No.: 242 302 2642

Fax No.: 242 356 3909

E-mail: CNNottage@centralbankbahamas.com

Languages spoken: English

**Superintendencia de Bancos de Panama
Apartado Postal 0832-2397 WTC
Panama, República de Panama**

Contact Person: Delia Cardenas
Superintendent of Banks

Tel. No.: (507) 206-7890

Fax No.: (507) 264-9422

E-mail: superintendencia@superbancos.gob.pa

Languages spoken: Spanish, English

Alternate: Miguel A. Lee H.
Director of Banking Supervision

Tel. No.: (507) 206-7944

Fax No.: (507) 264-9874

E-mail: superintendencia@superbancos.gob.pa

Languages spoken: Spanish, English