

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS CANADA
AND THE
TURKS & CAICOS ISLANDS FINANCIAL SERVICES COMMISSION
CONCERNING MUTUAL COOPERATION

1. The Office of the Superintendent of Financial Institutions Canada (OSFI) and the Turks & Caicos Islands Financial Services Commission (TCIFSC) (collectively, the Authorities) have reached the following understanding in order to establish an arrangement for the sharing of information to facilitate the performance of their respective duties and to promote the safe and sound functioning of financial institutions with cross-border establishments in their respective countries.
2. The Authorities express, through this understanding, their willingness to cooperate with each other on the basis of mutual trust and understanding in the supervision of cross-border establishments within their respective jurisdictions. A cross-border establishment is defined as a branch, a subsidiary or any other entity of a bank or insurer supervised by one Authority (the host Authority), which gives rise to the need for consolidated or group-wide supervision by the other Authority (the home Authority).

The Authorities

3. The OSFI was established in July 1987 by the Office of the Superintendent of Financial Institutions Act (OSFI Act). Under this Act, the OSFI is responsible for regulating and supervising all federally chartered, licensed or registered banks, insurance, trust and loan companies, cooperative credit associations and fraternal benefit societies in Canada. The Superintendent reports to the Minister of Finance.
4. The TCIFSC was established under the Financial Services Commission Ordinance 2001 and continued pursuant to the Financial Services Corporation Ordinance 2007. The TCIFSC has responsibility for the regulation for all financial services in the Turks and Caicos Islands (TCI) which include Banking, Insurance, Mutual Funds, Money Transmitters, Trusts and Trust Companies and Investment Dealers. The TCIFSC also administers the Companies, Trade Marks and Patents Registries pursuant to the Financial Services (Financial Services Ordinance) Regulations 2010.

Scope and General Principles

5. The provisions of this Memorandum of Understanding are not intended to create legally binding obligations or supersede domestic laws.
6. The Authorities will, within the framework of this Memorandum of Understanding, provide each other with the fullest assistance possible to promote the safe and sound functioning of financial institutions.
7. The Authorities recognise the importance and desirability of mutual assistance and exchange of information. Information would be shared to the extent reasonable and subject to any relevant statutory provisions, including those restricting disclosure. In addition, the provision of or request for information under this understanding may be denied on the grounds of national security or when disclosure would interfere with an ongoing investigation. Where a request for assistance is denied, or where assistance is not available under domestic law, the requested Authority will provide the reasons for not granting the assistance.
8. Requests for assistance will be made in writing by designated employees of the Authority and will be addressed to the requested Authority's contact persons. However, where the Authorities perceive a need for expedited action, requests may be initiated in any form but should be confirmed subsequently in writing.

Sharing of Information

9. Information-sharing includes contact during the authorisation and licensing process, in the supervision of the on-going activities of such entities and in the handling of problem institutions.
10. In connection with the authorisation process:
 - (a) the host Authority should notify the home Authority, without delay, of applications for approval to establish offices or make acquisitions in the host jurisdiction;
 - (b) upon request, the home Authority should inform the host Authority whether the applicant bank or insurance company is in substantial compliance with applicable laws and regulations and whether it may be expected, given its administrative structure and internal controls, to manage the cross-border establishment in an orderly manner. The home Authority should also, upon request, assist the host Authority with verifying or supplementing any information submitted by the applicant;
 - (c) upon request, the home Authority should inform the host Authority about the nature of its regulatory system and the extent to which it will conduct consolidated or group-wide supervision over the applicant bank or insurance company. Similarly, the host Authority should inform the home Authority about the nature of its regulatory system and the extent to which it will supervise the cross-border establishment of the applicant institution; and
 - (d) to the extent permitted by law, the home and host Authorities should share information on the fitness and properness of prospective managers of a cross-border establishment.

11. In connection with the ongoing supervision of their cross-border establishments, the Authorities intend to:

- (a) provide relevant information to their counterpart regarding material developments or supervisory concerns in respect of the operations of a cross-border establishment;
- (b) 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;
- (c) inform their counterpart of material administrative penalties imposed, or other formal enforcement action taken, against a cross-border establishment. Prior notification will be made, as far as practicable and subject to applicable laws; and
- (d) facilitate the transmission of any other relevant information that might be required to assist with the supervisory process.

Guidelines as to the form of requests for information are provided in Annex D

On-site Inspections

12. The Authorities recognise that cooperation is particularly useful in assisting each other in carrying out on-site inspections¹ of cross-border establishments in the host country. The home Authority should undertake to notify the host Authority of plans to examine a cross-border establishment or to appoint a third party to conduct an examination on its behalf, and to indicate the purposes and scope of the visit. The host Authority will allow the home Authority to conduct on-site inspections. As may be jointly decided by the Authorities, examinations may be carried out by the home Authority alone, or accompanied by the host Authority. Following the inspection, an exchange of views should take place between the examination team and the host Authority. Guidelines in regards to the procedures for the notice and execution of inspections are included in Annex E.

Protection of Information

13. The Authorities recognize that mutual trust can only be achieved if exchanges of information can flow with confidence in both directions. The Authorities will take all possible steps to preserve the confidentiality of the information received. In this regard, employees of both Authorities are bound to hold confidential all information obtained in the course of their duties. Any confidential information received from the other Authority will be used exclusively for lawful supervisory purposes.

14. An Authority that has received confidential information from the other Authority may subsequently receive a request (not legally enforceable) for that information from a third party, including a third party supervisory authority, who has a legitimate common interest in the matter. Prior to passing information to the third party, the Authority will consult with and obtain consent from the Authority that originated the information, who may attach conditions to the release of information, including that the third party recipient be bound to hold the information confidential.

¹ The words "inspection" and "examination" are used here interchangeably.

15. In the event that an Authority is legally compelled to disclose to a third party, including a third party supervisory authority, information that has been provided in accordance with this understanding, this Authority will promptly notify the Authority that originated the information, indicating what information it is compelled to release and the circumstances surrounding its release. If so required by the originating Authority, the Authority will use its best endeavours to preserve the confidentiality of the information to the extent permitted by law. The Authorities will inform one another of the circumstances in which they may be subject to legal compulsion to release information obtained.

16. Notwithstanding Section 15, the Authorities acknowledge that confidential information, including information they receive from each other, may be required by legislation to be passed to related government agencies set out in Annex A to this document, and confirm that in their respective jurisdictions these agencies are required by legislation to maintain the confidentiality of such information.

Financial Crime

17. The Authorities intend to co-operate closely when they identify suspected financial crime activities in supervised banks, insurance companies and financial transactions. For the purposes of this understanding, financial crimes are in particular: money laundering, unauthorised banking, investment or insurance business and all other violations of law on financial markets.

Ongoing Coordination

18. The Authorities intend to promote their cooperation through visits for information purposes. In addition, the Authorities intend to pursue areas where the training of staff at either agency would benefit from input and support by the other agency in order to reinforce sound banking and insurance supervisory practices in both countries.

19. The Authorities will conduct meetings as often as appropriate to discuss issues concerning banks and insurance companies that maintain cross-border establishments in the respective countries, and to review the effectiveness of cooperation arrangements.

Modifications and Term

20. This understanding will continue indefinitely subject to modification by the mutual consent of the Authorities or termination by either party with 30 days advance notice in writing. After termination, the confidentiality provisions will continue to apply to any information provided under this understanding prior to termination.

21. Annexes A, B, C, D and E will be reviewed at least annually and reconfirmed or amended as necessary to ensure that the information therein remains current.

On behalf of:

The Turks & Caicos Islands Financial Services Commission

By:



J. Kevin Higgins, Managing Director

Dated: 02/08/11

The Office of the Superintendent of Financial Institutions Canada

By:



Julie Dickson, Superintendent

Dated: July 15/2011

Annexes

- A – Related Government Agencies
- B – Contact Persons
- C – Cross-Border Establishments
- D – Request for Information Guidelines
- E – Undertaking of Inspection Guidelines

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Related Government Agencies

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The Authorities acknowledge that confidential information, including information they receive from each other, may be required by legislation to be passed to related government agencies or persons set out below, and that these agencies and persons are required by legislation to maintain the confidentiality of such information. Confidential information passed to those listed below are exempted from the notification provisions of Section [15] of the MoU.

Office of the Superintendent of Financial Institutions Canada¹

- Commissioner of the Financial Consumer Agency of Canada
- Governor of the Bank of Canada
- Chairperson of the Canada Deposit Insurance Corporation
- Deputy Minister of Finance.

Turks & Caicos Islands Financial Services Commission

- N/A

¹ All are members of the Financial Institutions Supervisory Committee (FISC), a statutory body authorized under the OSFI Act chaired by the Superintendent of Financial Institutions.

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Contact Persons

(@ July 2011)

Office of the Superintendent of Financial Institutions Canada (OSFI)

Mr. Ted Price, Assistant Superintendent, Supervision Sector
PO Box 39, 121 King Street West, Toronto ON, M5H 3T9, Canada

- Tel: (416) 973-4385
- Fax: (416) 973-1168
- E-mail: ted.price@osfi-bsif.gc.ca

Ms. Patty Evanoff, Senior Director, Legislation and Approvals Division
15th floor, 255 Albert Street, Ottawa ON, K1A 0H2, Canada

- Tel: (613) 990-9004
- Fax: (613) 998-6716
- E-mail: patty.evanoff@osfi-bsif.gc.ca

Turks & Caicos Islands Financial Services Commission (TCIFSC)

Mr. J. Kevin Higgins, Managing Director
Unit D7/8 Caribbean Place, Leeward Highway, Providenciales, Turks and Caicos islands, BWI

- Tel: (649) 946-5314
- Fax: (649) 246-3371
- E-Mail: khiggins@tcifsc.tc

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Cross-Border Establishments (CBEs)²

(@ July 2011)

Canadian CBEs Supervised in the Turks & Caicos by the TCIFSC

- RBC Royal Bank (Bahamas) Limited
- Scotiabank (Turks & Caicos) Limited

Turks & Caicos CBEs Supervised in Canada by OSFI

- N/A

² Cross-border establishment means a branch, a subsidiary or any other entity supervised in and by the host jurisdiction which gives rise to the need for consolidated supervision by the home supervisor.

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Requests for Information Guidelines

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A request for information 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 and why the information sought would be of assistance;
- (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 laws that are sought to be enforced or administered and which give rise to the request for assistance;
- (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) The urgency of the matter and where appropriate, 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 within five business days;
- (g) An indication of any special precautions that should be taken in collecting the information due to investigatory considerations, including the sensitivity of the information.

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Undertaking of Inspection Guidelines

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Notice to undertake an inspection should include:

- a) Written explanation of the specific purpose of the requested inspection or examination and the aspects of the operations of the cross border establishment to be inspected or examined.
- b) The names and positions of those persons who the Requesting Authority would like to be included on the inspection or examination team.
- c) During the course of any inspection or examination the Requesting Authority shall not be entitled to have access to the name and/or title and/or other information of any account or accounts of a depositor or of any Trust or Trusts held by the cross border establishment being inspected or examined unless the Requesting Authority can satisfy the Requested Authority that the voluntary consent of such account holder or settler or trustee, as the case may be, has been obtained and a copy of such written consent has been provided to the Requested Authority. Any information gathered in the inspection or examination shall only be used for the purposes as specified in the request pursuant to (a) above.
- d) The Requested Authority shall at a reasonable time, usually no longer than (3) three months, from the end of the inspection unless otherwise mutually agreed, produce and submit to the Requesting Authority a final Report on the inspection or examination of the cross border establishment.
- e) All members of the inspection or examination team will be required to give an undertaking of confidentiality.