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BVI signs Multilateral Memorandum with Group of International Financial Centre Supervisors

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The British Virgin Islands Financial Services Commission (**BVI FSC**) has signed a multilateral Memorandum of Understanding (**MoU**) between members of the Group of International Financial Centre Supervisors. The objective of the MoU is to ensure clarity and effective regulatory cooperation between authorities responsible for supervising the banking sector in signatory jurisdictions.

The MoU represents another way that the authorised competent authorities in the participating jurisdictions can cooperate in relation to the exchange of information.

Under the MoU the various competent authorities of the participating jurisdictions agree to provide mutual assistance and exchange of information to enable the competent authorities to perform their duties and functions effectively according to the domestic laws and regulations of their home jurisdictions.

The MoU also includes a framework of roles and requirements of such authorities, in order to achieve effective regulation and supervision and to make provision for confidentiality rules regarding the sharing and exchange of information.

The jurisdictions participating in the MoU include Bermuda, BVI, Cayman Islands, Gibraltar, Guernsey, Isle of Man, Jersey, and all other **GIFC members**. The BVI FSC signed the MoU on 8 May 2017.

In this note, we examine briefly some of the important sections of the MoU.

Requests for information

The MoU does not affect the abilities of competent authorities to obtain information from persons on a voluntary basis provided that the proper procedure is followed in the jurisdiction of each competent authority. Where a request is made under the MoU, the requesting authority can make a request for assistance or information by electronic communication attaching a scanned original signed document addressed to the FSC's contact person referred to in Appendix C of the MoU. The FSC could ask that the

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original signed request be sent by post. If the request complies with paragraph 5 then any request for the original should not delay the commencement of work on it. The request to the FSC under the MoU would need to contain the following information:

- (a) a description of both the subject matter of the request and the purpose for which the assistance or information is sought
- (b) a description of the assistance, documents or information sought by the requesting competent authority
- (c) any information in the possession of the requesting competent authority that might assist the requested competent authority ie the FSC in identifying the person believed by the requesting competent authority to possess the information sought, or the places where the requested competent 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 assistance or information to the specified laws and / or regulations
- (e) the names of any third parties to whom the requesting competent authority is bound to or expects to release the requested information

To the extent that a person ie a natural person, body corporate, partnership or unincorporated association, government or political subdivision, agency or instrumentality of a government receives a request under the MoU such a person can deny the request under the following grounds as set out in paragraph 10 of the MoU where:

- (a) the request would require the requested competent authority to act in a way that would violate the law and regulations of the jurisdiction of the requested competent authority
- (b) the request is not in accordance with the provisions of the MoU
- (c) corresponding assistance would not be given in the country or territory of the requesting competent authority
- (d) on grounds of public interest

Above all, notwithstanding any of the above, the applicable rule of law must be followed in the participating jurisdictions and to the extent a person who has received a request under the MoU feels that their rights may be infringed, there is always recourse to the courts to seek a remedy at law.

Execution of requests

Where the requested competent authority is satisfied that assistance should be given it will provide the information held in the files of the requested competent authority or use its powers to seek information from financial institutions ie trust and corporate service providers regulated by the FSC. Under the MoU the requests are assessed on a case-by-case basis. Where a request is urgent a response can be provided over the telephone, facsimile or other electronic means and, if requested, the original signed document should be sent to the requesting competent authority's contact person within five business days.

Unsolicited information

Where one competent authority has information that will assist its sister competent authority, the former may provide such information fully and freely to the extent permitted under the laws and regulations of its jurisdiction even though no formal request was made.

Permissible uses of information

Assistance provided under the MoU will need to be used only for the purpose of enabling the requesting competent authority to exercise its regulatory functions under its domestic law. Any confidential information (identity, assets, liabilities transactions or accounts of a financial institution) that is provided by the requested competent authority to the requesting competent authority shall not be used for any other purpose unless the written consent of the requested competent authority is obtained. Where information is to be shared with third parties, the requesting competent authority would need to seek the consent of the requested competent authority which, if it deems fit, consent in writing to the information being shared with or used by the third party.

Undertaking of inspection visits

A competent authority may request to visit a financial institution in the jurisdiction of the requested competent authority where relevant and necessary to fulfil its obligations as the supervisor of a financial institution. The requesting competent authority would need to give at least 30 days' notice to the requested competent authority of the time and scope of the inspection and would need to provide the requested competent authority with a list of names of individuals who will conduct the inspection ie the inspection team. The requested competent authority has the right to accompany the requesting competent authority on any inspection visit. Before any on-site inspection is commenced the requesting authority will need to discuss the scope of the inspection and any other matters of interest with the FSC at its office and all members of the inspection team will be required to give an undertaking to comply with the confidentiality provisions of the legislation in the BVI.

Confidentiality

The competent authorities will, keep confidential:

- (a) any request for assistance or information pursuant to the MoU
- (b) the contents of any requests made pursuant to the MoU
- (c) any information received or provided pursuant to the MoU
- (d) any matter arising during the operation of the MoU, including consultations and unsolicited information

The requesting competent authority shall not provide to any person information provided to it by the requested competent authority unless that person agrees in writing or is legally obligated to maintain the confidentiality of the information. This confidentiality continues even after any competent authority ceases cooperation under the MoU. Where a competent authority is legally compelled by legislation or court order to disclose to a third party, information that has been provided under the MoU, the competent authority should inform the other competent authority indicating what information it is compelled to release. The competent

authorities will need to work together to ensure that reasonable steps are taken to protect the confidentiality of the information that is subject to the disclosure.

Click [here](#) to download the full text of the MoU from the BVI FSC website.

Should you have any questions on any matter surrounding the MoU, please do feel free to contact the authors.

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