

**MEMORANDUM  
OF  
UNDERSTANDING**

**BETWEEN**



**BANK OF BOTSWANA  
AND  
COMPETITION AUTHORITY**

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**MEMORANDUM OF UNDERSTANDING ENTERED INTO AND SIGNED BETWEEN**  
**THE BANK OF BOTSWANA AND COMPETITION AUTHORITY**

**1. PREAMBLE**

- 1.1 In recognition of the need for an effective supervision of financial institutions, and in the interest of promoting a sound and stable financial sector which is supportive of a sustainable macroeconomic development, the Bank of Botswana and the Competition Authority hereby agree to enter into this Memorandum of Understanding (MoU), which serves to establish arrangements with the intention of the prevention of, and redress for, anti-competitive practices in the banking sector, and the removal of constraints on the free play of competition in the domestic economy.

**2. AUTHORITY**

- 2.1 The MoU is consistent with the spirit and principles of the Bank of Botswana and Competition Authority to enter into agreement with each other on matters of mutual interest. The parties give express assurance that under applicable laws, they have authority to enter into and comply fully with the conditions of the MoU.

**3. PURPOSE**

- 3.1 This MoU sets forth the parties statement of intent to establish a framework for mutual assistance, co-operation and exchange of information, to the extent to which that exchange of information is permitted by law, and in fulfillment of the parties respective duties and responsibilities.

**4. OBJECTIVES OF THE MEMORANDUM**

- 4.1 This MoU is being executed in order to:
- (a) foster supervisory cooperation between the Bank of Botswana and the Competition Authority in the regulation of anti-competitive behavior in the banking and financial services sector;
  - (b) promote collaboration between the Bank of Botswana and the Competition Authority in the investigation, analysis and combating of anti-competitive practices in the broader economy; and
  - (c) facilitate smooth functioning of the financial system infrastructure.
- 4.2 This MoU is entered into on the basis of mutual respect, in a spirit of goodwill and does not affect the independence of the Bank of Botswana or the Competition Authority.

- 4.3 This MoU does not affect any arrangements under any MoU that the Bank of Botswana or the Competition Authority has entered into.

## 5. DEFINITIONS

- 5.1 In this MoU, unless the context provides otherwise:

- (a) "Authority" refers to Competition Authority.
- (b) "Bank" refers to Bank of Botswana.
- (c) "MoU" refers to this Memorandum of Understanding between the Bank and the Authority.
- (d) "Parties" collectively refers to the Bank of Botswana and Competition Authority.

## 6. OBJECTIVES OF THE PARTIES

- 6.1 The Bank is established under Section 3 of the Bank of Botswana Act (Cap. 55:01). Its principal objectives as set out under Section 4, are as follows:

- (a) to promote and maintain monetary stability, an efficient payments mechanism and liquidity, solvency and proper functioning of soundly based monetary, credit and financial system in Botswana;
- (b) in so far as it is not inconsistent with the objectives set out in paragraph (a), to foster monetary, credit and financial conditions conducive to the orderly, balanced and sustained economic development of Botswana; and
- (c) to assist in so far as it is not inconsistent with the objectives as set out in (a) and (b), in the attainment of national economic development goals.

- 6.2 Consistent with its objectives, the Bank's mission is to promote and maintain a safe, stable, sound, efficient and competitive banking system. In fostering competition amongst banks, the Bank is guided by the Banking Act (Cap: 46:04). In addition, the Bank is responsible for the evaluation and analysis of mergers and acquisition transactions (other than in the normal course of business) in terms of Section 9(9), Section 17(9), Section 17(10) and Section 34 of the Banking Act (Cap:46:04). The Bank is guided by the Mergers and Acquisitions policy in this regard.

- 6.3 The Authority is established under Section 4 of the Competition Act of 2009, with the responsibility of the prevention of, and redress for, anti-competitive practices in the economy, and the removal of constraints on the free play of competition in the market. Section 35 of the Competition Act empowers the Authority to conduct an investigation into any practice, where the Authority has reasonable grounds to suspect that:

- (a) The practices, conduct or arrangements in question:
  - (i) may constitute an infringement of Section 25, which prohibits cartels to enter into agreements, the object of which is to fix purchase or selling prices, or dividing markets by allocating customers, suppliers, geographic



areas, or specific types of goods or services, or concerted practices and a collective denial of access of an enterprise to an arrangement crucial to competition;

- (ii) may constitute an infringement of Section 26(1), which prohibits any horizontal or distribution agreements, the object of which is to set minimum prices (resale price maintenance);
  - (iii) is prohibited after investigation in terms of Section 27(1), which prohibits the entering by enterprises into any other agreements, the object or effect of which is the prevention or substantial lessening of competition in a market for any goods or services in Botswana; and
  - (iv) may constitute an infringement of Section 30(1), which prohibits the abuse of a dominant position by an enterprise. A dominant position is defined in Section 2 as "a situation in which one or more enterprises possess such economic strength in a market as to allow the enterprise or enterprises to adjust prices or output without effective constraint from competitors or potential competitors".
- (b) Any other conduct that affects competition as may be captured under the Competition Act.

## **7. SCOPE OF COOPERATION AND EXCHANGE OF INFORMATION**

- 7.1 This MoU forms the basis for exchange of information and supervisory cooperation between the Bank and the Authority. However, nothing contained in this MoU abrogates the powers, responsibilities and any legally binding obligations or supersedes any laws and regulations of the respective parties as enshrined in either the Bank of Botswana Act (CAP. 55:01); Banking Act (CAP.46:04) or the Competition Act of 2009.
- 7.2 The parties will endeavor to inform each other in advance of regulatory changes or other material events that may have a significant impact on their joint operations or activities as described below.
- 7.3 Subject to confidentiality provisions in the respective legislations, parties to the MoU undertake to:
- (i) provide each other with useful information on an investigation when requested by the other party or proactively by any party without a request being made;
  - (ii) assist each other with investigations, research and analysis of cases that one party may be engaged in;
  - (iii) conduct joint training sessions for officers dealing directly with matters pertinent to this MoU;
  - (iv) consult each other on a regular basis on matters of mutual interest;

- (v) seek clarification from each other on any media reports that may be related to matters connected with or incidental to the MoU;
  - (vi) avail to each other any results of the investigation that may assist the other party; and
  - (vii) appear in Court or other judicial and quasi-judicial bodies as expert witness or to provide evidence in relation to their specific competency.
- 7.4 To the extent possible, all requests for information will be in writing and signed by the Executive Secretary of the Authority or the Director, Banking Supervision Department, Bank of Botswana or their designated officers. The request will specify:
- (i) the information sought by a member party;
  - (ii) a detailed description of the matter which is the subject of the request and the purpose for which the information is sought; and
  - (iii) the desired time period for reply and, where appropriate, the urgency thereof.
- 7.5 In urgent situations, the parties will endeavor to notify each other of the urgency of the matter and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of the efforts to address the situation. During urgent situations, requests for information may be made in any form, including orally by designated officers, provided such communication is subsequently confirmed in writing at an opportune time.
- 7.6 Where an action by any party to this MoU requires the policy guidance of other governing bodies, the usual extra-ordinary processes to arrange for ad-hoc or special decisions will be followed with the urgency the matter would deserve.
- 7.7 Where joint investigations are carried out, the parties involved will consult each other before either of them issues a media release concerning a transaction covered by this MoU.
- 8. HANDLING OF CONFIDENTIAL INFORMATION**
- 8.1 Each party will endeavor to maintain the public confidence in terms of whistle-blowers and other sources of information, which would not be unnecessarily disclosed to any party, and cooperation in any way, will not be expected to be dependent on knowledge of the source of the information.
- 8.2 Where confidential information is required by a judicial or quasi-judicial organ, the disclosure will be made in conformity with the direction given by the presiding decision maker/adjudicator and the rules that generally govern their sittings.



8.3 While information exchanged may be used by any party in their enforcement activities, such information must comply with the relevant confidential clauses and avoid unnecessary clouding of statutory impropriety by the party that provided the information.

8.4 This MoU is a public document and thus may be quoted generously by any party to the MoU.

8.5 Unless otherwise expressly stated, all information sought or exchanged will be deemed to be usable by the receiving party according to the legal framework establishing them.

## 9. **ESTABLISHMENT OF A JOINT WORKING COMMITTEE**

9.1 A Joint Working Committee ("the JWC") constituted by representatives of the parties as nominated by the parties will be established pursuant to this MoU and will function on an on-going basis.

9.2 The Joint Working Committee will comprise of;

- (i) Deputy Director and Principal Bank Examiner, Banking Supervision Department, Bank of Botswana; and
- (ii) Director and Manager, Legal and Enforcement Department, Competition Authority.

9.3 Functions of the Committee will include;

- (i) management and facilitation of meetings, cooperation and consultation in respect of matters dealt with by each party in terms of this MoU;
- (ii) proposition, when necessary, any amendment of, or supplementation to this MoU;
- (iii) advisory services to the senior management of the parties on issues affecting efficient and effective cooperation and implementation of the MoU and solutions thereto; and
- (iv) any matter connected to or incidental to the MoU.

## 10. **RESOURCES UTILISATION**

10.1 Each party will be assumed to bear its own costs and factor the aspects of this MoU in its respective financial budget unless such are voluntarily borne by the other.

## **11. STATUTORY LIMITATIONS**

11.1 The provision of, or request for, information under this MoU may be denied:

- (i) where compliance would require a party to act in a manner that would violate the applicable law;
- (ii) under circumstances where there is an imminent risk to national security or other overriding public interest; or
- (iii) when compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where prejudice to the investigation is likely to outweigh the adverse effects of denying the information.

11.2 No provision of this MoU will give rise to the right on the part of any person, entity or government authority, other than the parties herein, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this MoU.

## **12. COMMENCEMENT, AMENDMENTS AND TERMINATION OF THE MOU**

12.1 This MoU will come into effect on the date of signature, and will remain valid indefinitely unless terminated by either party giving the other party thirty (30) days written notice of intention to terminate, or until it is amended or repealed by both parties hereto, acting jointly.

12.2 Any variation of this MoU will have no legal effect and will not be binding on the parties unless reduced to writing and signed by persons authorised to act on behalf of the parties.

12.3 Upon giving the required termination notice, the requests for assistance made by the parties prior to the notification, will continue to have effect.

## **13. DISPUTE SETTLEMENT**

13.1 This MoU does not impose any legally binding obligations on the parties, and does not create any rights whatsoever, enforceable by the parties or any third party. Therefore, any dispute or controversy arising from the implementation or application of the MoU will be settled by negotiation, with a view to finding an amicable settlement. Should implementation of this MoU face any legal impediments due to laws and regulations of either party, the laws of each party will prevail.

14. **CORRESPONDENCES AND CONTACT PERSONS**

14.1 The parties choose the following addresses for purposes of this Agreement:

BANK OF BOTSWANA  
PLOT 17938  
KHAMA CRESCENT  
PRIVATE BAG 154  
GABORONE  
TEL: +267 360 6297  
FAX: +267 391 3862  
E-MAIL: motsomia@bob.bw

**CONTACT PERSON: DIRECTOR, BANKING SUPERVISION DEPARTMENT**

THE COMPETITION AUTHORITY  
PLOT 50664, FAIRGROUNDS OFFICE PARK  
PRIVATE BAG 00101  
GABORONE  
TEL: +267 393 4278  
FAX: +267 312 1013  
EMAIL: CA@competitionauthority.co.bw

**CONTACT PERSON: THE EXECUTIVE SECRETARY, COMPETITION  
AUTHORITY**

**FOR: BANK OF BOTSWANA**

  
\_\_\_\_\_  
**DIRECTOR, BANKING SUPERVISION DEPARTMENT**

6th June 2014  
**DATE**

**FOR: COMPETITION AUTHORITY**

  
\_\_\_\_\_  
**EXECUTIVE SECRETARY**

06/06/14  
**DATE**



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In WITNESS hereof the Parties have caused this MoU to be executed as of the ..... day of ..... 2014, and the undersigned acknowledge having read and understood the terms and conditions thereof:

**For: Bank of Botswana  
Witness**

**For: Competition Authority  
Witness**

1. Name: <u>GOBENGMINA BATHOLENG</u>	Name: <u>KESIGO MODONGO</u>
Address: <u>P/BAG 154, GABORONE</u>	Address: <u>P/BAG 00101, GABORONE</u>
Occupation: <u>ACTING DEPUTY DIRECTOR</u>	Occupation: <u>OFFICER, LEGAL</u>
Signature: <u>[Signature]</u>	Signature: <u>[Signature]</u>
Date: <u>6/6/14</u>	Date: <u>06/06/14</u>

2. Name: <u>Dr. T. A. KOTANE TSANO</u>	Name: <u>DARCAN T. MOKGOSI</u>
Address: <u>P/BAG 154, GABORONE</u>	Address: <u>P/BAG 001, GABORONE</u>
Occupation: <u>DEPUTY DIRECTOR</u>	Occupation: <u>DIRECTOR</u>
Signature: <u>[Signature]</u>	Signature: <u>[Signature]</u>
Date: <u>06/06/2014</u>	Date: <u>06/06/14</u>