

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 4323

02 February 2024

**MEMORANDUM OF UNDERSTANDING****between****THE FINANCIAL SECTOR CONDUCT AUTHORITY**

A juristic person established in terms of section 56 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), herein duly represented by **Unathi Kamlana**, in his capacity as the **Commissioner** of the Financial Sector Conduct Authority.

**and****THE COMPETITION COMMISSION OF SOUTH AFRICA**

A juristic person established in terms of section 19 of the Competition Act, 1998 (Act No. 89 of 1998), herein duly represented by **Ms. Doris Tshepe**, in her capacity as the **Commissioner** of the Competition Commission of South Africa

(Hereinafter collectively referred to as "the Parties")

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## MEMORANDUM OF UNDERSTANDING

## PREAMBLE

**WHEREAS** the Financial Sector Conduct Authority (FSCA) is a statutory body established in terms of Chapter 4 of the Financial Sector Regulation Act, No. 9 of 2017 (FSR Act);

**AND WHEREAS** the objectives of the FSCA are to: enhance and support the efficiency and integrity of financial markets; protect financial customers by promoting fair treatment of financial customers by financial institutions and providing financial customers and potential financial customers with financial education programs; and otherwise promoting financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions; and assist in maintaining financial stability;

**AND WHEREAS** the functions of the FSCA are set out in section 58 of the FSR Act and includes the licensing, regulation, supervision and enforcement of financial service providers, financial product providers and market infrastructures and the promotion, to the extent consistent with achieving the objective of the FSCA, sustainable competition in the provision of financial products and financial services, including through co-operation and collaboration with the Competition Commission;

**WHEREAS** the Commission is mandated by the Competition Act No. 89 of 1998, as amended (Competition Act) to, *inter alia*, investigate and evaluate restrictive practices, abuse of dominant position, exemptions, and mergers, as well as conducting market inquiries;

**AND WHEREAS** the Commission, in terms of the provisions of section 21(1)(h) read with section 82 of the Competition Act may negotiate agreements with any regulatory authority which, in terms

of any public regulation, has jurisdiction in respect of conduct regulated in terms of the Competition Act;

**WHEREAS** the respective mandates of the FSCA and Commission are mutually reinforcing and therefore the FSCA and Commission recognise the importance of and need for cooperation, collaboration, assistance and information exchange –

- (a) in the administration, supervision and enforcement of laws relevant to the financial sector;  
and
- (b) for the maintenance of an open, fair, efficient and stable domestic financial sector; and

**NOW THEREFORE**, the FSCA and Commission hereby express their willingness to cooperate on the basis of mutual trust and understanding and have reached the following understanding to establish an arrangement for cooperation, collaboration, assistance and sharing of information, in order to facilitate the effective performance of their respective functions and duties.

## 1. DEFINITIONS

For purposes of this Memorandum of Understanding, unless the context requires otherwise

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**"Data subject"** means the person to whom the information relates;

**"Financial Institution"** means institutions and persons regulated or supervised by the Parties;

**"Information"** includes any document including –

- (a) a book, record, security, invoice, account and any other information appearing on a physical object;
- (b) information created, stored, recorded or transmitted electronically, digitally, photographically, magnetically or optically, or other Intangible but readable form by way of electronic, magnetic, optical or similar means; and
- (c) any device on, or by means of, which information is recorded or stored;

**"MoU"** means this memorandum of understanding and its annexures, if any, and which includes any document expressly incorporated into it by reference;

**"Originating person"** means a person that initially created or owned the information;

**"Parties"** means the parties to this MoU, namely the FSCA and the Commission jointly, and the word "Party" shall mean either one of them, as the context may indicate;

**"Person"** means a natural or legal person, partnership, trust or body of persons corporate or unincorporated, including association, government or political subdivision, agency or instrumentality of a government.

## 2. INTERPRETATION

In the interpretation of any terminology used in this MOU, any word or expression to which a meaning is assigned in the FSR Act and the Competition Act has the meaning assigned to it unless otherwise specified.

### 3. PURPOSE OF THE MOU

- 3.1. The purpose of this MOU is to regulate, strengthen and formalise the relationship of trust, good faith, mutual co-operation, support, assistance and appropriate co-ordination of actions between the Parties on matters of mutual interest;
- 3.2. This MOU is entered into to establish a framework for collaboration between the Parties with a view of, *inter alia*:
- 3.2.1. Fostering a consistent interpretation and application of the principles of competition when exercising their powers and their respective functions in terms of their enabling legislations;
  - 3.2.2. Minimising the duplication of effort and cost so far as reasonably practicable;
  - 3.2.3. Managing areas of concurrent jurisdiction, to the extent applicable; and
  - 3.2.4. Providing for the exchange of information subject to the protection of confidential information.
- 3.3. The Commission agrees to support the initiatives by FSCA aimed at promoting competition in the financial sector as well as developmental and transformation objectives.

### 4. PRINCIPLES OF COOPERATION

- 4.1. In order to achieve the purposes of this MOU, the Parties agree to:
- 4.1.1. cooperate with each other in mutual trust and good faith;
  - 4.1.2. assist and support each other in respect of agreed upon services and commitments between them in terms of this MOU;
  - 4.1.3. inform each other of, and consult each other on matters of common interest; and
  - 4.1.4. provide to each other the necessary support for the successful performance of the tasks and programmes envisaged in this MOU.

## 5. LEGAL EFFECT

### 5.1. This MOU does not –

- 5.1.1. create any legally binding obligations, confer any rights or supersede the laws governing the Parties;
- 5.1.2. create any enforceable rights or any binding legal obligation upon the Parties, or the right for any person, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this MOU;
- 5.1.3. affect the ability of the Parties to exchange or use non-confidential information, nor does it affect the rights of the Parties under its laws or any other arrangement to take measures otherwise than as provided herein to obtain information necessary to ensure compliance with, or to enforce, its laws;
- 5.1.4. intend to create any agency relationship between the Parties and neither Party may bind the other in any way;
- 5.1.5. limit the Parties to take solely those measures described herein in fulfilment of their functions or responsibilities; or
- 5.1.6. diminish the full autonomy of either Party or constrain either Party from discharging its statutory functions.

5.2. Neither Party may assign their rights and obligations they may have in this MOU to any other person without the prior written consent of the other Party.

## 6. SCOPE OF COOPERATION

6.1. The areas of cooperation between the Parties shall include, *inter alia*, the following:

- 6.1.1. Collaboration and cooperation on matters dealt with by either regulatory authority that affects the mandate and functions of the other.

- 6.1.2. Strategic collaboration on measures to promote competition in the financial sector.
- 6.1.3. Collaboration on advocacy and outreach initiatives to facilitate better access to the public and become more visibly involved in education and promotional campaigns, particularly in rural areas.
- 6.1.4. Any other areas of interest as may be identified from time to time.
- 6.2. Without limiting paragraph 6.1., the Parties agree to cooperate and collaborate on, and exchange timely information in their possession relating to, the following -
- (a) the setting of standards, requirements or conditions that may affect matters of mutual interest;
  - (b) strategic measures to promote and enhance sustainable competition in the provision of financial products and financial services;
  - (c) providing advisory information and technical expertise on matters relating to the operation of the financial sector and of financial institutions, including but not limited to sustainable competition in the financial sector;
  - (d) inspections and investigations that may affect the mandate and functions of the other Party, and the detection, prevention and reporting of contraventions or non-compliances of laws administered by the Parties;
  - (e) enforcement of the relevant laws or requirements administered by the Parties, which actions may impact the mandate and functions of the other Party, including information relating to enforcement decisions (such as pending enforcement action and/or past decisions) and the enforcement process; and
  - (f) market inquiries, policy proposals and/or research studies that the Parties may agree to develop and/or undertake.

**6.3. The Parties will –**

- (a) proactively identify types of information which, if shared, would enhance the effectiveness of the cooperation and collaboration arrangements between them, including but not limited to information obtained or in the possession of one Party that would be likely to assist the other Party in administering, supervising or enforcing applicable laws, in furtherance of their respective mandates;
- (b) notify each other, in a timely manner, of any known material event that could adversely impact a financial institution's compliance with the laws administered by the Parties respectively;
- (c) be transparent regarding planned activities that might potentially impact the work of the other Party and the
- (d) Parties shall seek ways to complement each other in the performance of their respective functions;
- (e) consult each other, in a timely manner, on matters of mutual interest;
- (f) provide each other with assistance under this MOU to the fullest extent permitted by the respective laws governing the Parties; and
- (g) meet at least once annually to discuss matters of mutual interest and assess the effective operation of this MOU.

**7. PROCEDURES**

7.1. The FSCA may request and receive advice from the Commission, in respect of regulatory aspects falling under the competency of the Commission in matters relating to the financial sector.

7.2. The Commission may request and receive advice from the FSCA, in respect of regulatory aspects falling under the competency of the FSCA.



- 7.3. All requests for advice or information by either regulatory authority shall be submitted in writing.
- 7.4. To facilitate an appropriate and timely response, any request for information or assistance made in terms of this MOU shall be made in writing covering at least the following elements:
- (a) the purpose for which the information is sought;
  - (b) whether and how the information requested is in connection with the performance of the functions and duties of the requesting Party; and
  - (c) the deadline before or upon which such information or assistance must be provided.
- 7.5. The Party receiving a request for information or assistance will cooperate to the best of its ability towards achieving the deadline referred to in subparagraph (c) of paragraph 7.4., and will keep the other party informed of any delays that may be experienced.

## **8. INSTITUTIONAL CONTACT PERSONS**

### **8.1. For purposes of this MOU:**

- 8.1.1. The Manager of the Advocacy Division will be the main contact person at the Commission.
- 8.1.2. The Head of the Policy Support Department will be the main contact person at the FSCA.
- 8.1.3. All communications between the Parties shall take place between the relevant points of contact unless agreed otherwise in a particular case.
- 8.1.4. Should the regulatory authorities have to exchange information, as a result of discussions at the Committee, the processes set out in this MOU shall be followed.

- 8.1.5. The Parties must notify each other promptly of changes regarding the principal point of contact.

## **9. EXCHANGE OF INFORMATION**

- 9.1. The FSCA and the Commission may exchange information as may be necessary to give effect to this MOU.

## **10. CONFIDENTIALITY AND ONWARD SHARING OF INFORMATION**

- 10.1. The Parties acknowledge that all information exchanged in terms of this MOU is confidential and, subject to clause 6.5., may only be used for the purpose for which it was exchanged.
- 10.2. The Parties undertake to only use the information within the scope of their powers and duties and within the prescripts of laws applicable to the Parties.
- 10.3. If a Party intends to use the information furnished under this MOU for any purpose other than the purpose referred to in clause 6.4., it must obtain the written consent from the Party from which the information originates.
- 10.4. The Parties may not disclose any information obtained under this MOU to a third-party and must where compelled by a law, use all reasonable means to oppose the compulsion to disclose, and must otherwise protect the information.
- 10.5. The Parties agree that information will only be disclosed to a third-party if –
- (a) such disclosure is required by law and after the disclosing Party has informed the Originating Party of the event and the circumstances in which the information shall be made available; or
  - (b) such disclosure is permitted under legislation which expressly provides for the disclosure of information; or
  - (c) if the information is public information; or
  - (d) the prior written consent of the Originating Party has been obtained; or

- (e) with the written consent of the data subject.

**10.6. The Parties further undertake that –**

- (a) they have, and at all times will have, proper and effective safeguards in place to protect information shared between the Parties;
- (b) those safeguards comply, and at all times will comply, with the provisions of section 251 of the FSR Act and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
- (c) information requested will be limited to what is required in connection with the performance of their obligations and duties; and
- (d) they will ensure that information shared retains its integrity and confidentiality, including by taking appropriate, reasonable technical and organisational measures to prevent the loss, unauthorised destruction or processing of, and damage or unlawful access to, the information.

**10.7. Where confidential information is disclosed either party in contravention of this MOU, such disclosing party shall be solely liable in law for such disclosure.**

**10.8. A Party shall immediately notify the other Party if any of the undertakings referred to in paragraphs 5.1 to 5.6 cannot be complied with.**

**11. GENERAL PROVISIONS**

**11.1. The provision of, or request for information under this MOU may be denied:**

- 11.1.1. where compliance would require the FSCA or the Commission to act in a manner that would violate the applicable law;
- 11.1.2. under circumstances where there is an imminent risk to national security; or
- 11.1.3. when a Party determines that 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. The provisions set forth under clauses 11 must prevail with respect to any information provided or actions taken under this MOU prior to its termination.

## **12. LIABILITY**

12.1. Neither Party shall be liable to the other Party for any direct, indirect or consequential costs, losses, damages, liability, claims or proceedings of whatever nature arising out of this MoU, howsoever caused.

12.2. Each Party bears its own liability arising out of its own negligence, wrongful act or omission, and its own breach of this MoU.

## **13. DURATION OF THE MOU**

13.1. This MOU shall remain in force until it is amended or repealed by the Parties acting jointly.

## **14. REVIEW AND AMENDMENT**

14.1. The operation and implementation of this MoU will be subject to periodic review to assess the effectiveness of the arrangements between the Parties and to accommodate developments that require additional cooperation between the Parties.

14.2. No amendment or consensual cancellation of this agreement or any term of this agreement, including this clause, shall be binding unless recorded in a written document signed by duly authorised representatives of the Parties.

14.3. Any such amendment shall come into effect on a date as agreed upon between the Parties and shall form part of this MoU.

**15. DISPUTE RESOLUTION**

- 15.1. The Parties will maintain open communication between one another in accordance with the purpose of this MoU and strive to ensure early resolution of any points of disagreement arising out of the interpretation, operation and implementation of this MoU.
- 15.2. The Parties understand and acknowledge that they have a mutual interest in resolving disagreements in a timely and efficient manner.
- 15.3. In the event of disputes arising from the interpretation, operation or implementation of this MoU, the Parties agree to make every reasonable effort to settle the dispute amicably.
- 15.4. Should any dispute or difference arise between the regulators with regard to interpretation and/or implementation of any one or more of the provisions of this MOU, such dispute or difference must be resolved in any manner other than through judicial proceedings.

**16. TERMINATION OF THE MOU**

- 16.1. This MoU will continue in effect until the expiration of 30 days after either Party gives written notice to the other Party of its intention to terminate the MoU.
- 16.2. The provisions of this MoU shall remain in force with respect to all requests for assistance made and information exchanged prior to the termination date, especially in terms of regulating the permissible use of confidential information.

**17. COMMENCEMENT OF MOU**

- 17.1. This MoU will come into effect on the date of signature by the last Party thereto.
- 17.2. This MOU shall be governed in accordance with the laws of the Republic of South Africa.

**18. DOMICILIUM CITANDI ET EXECUTANDI**

18.1. The Parties choose the following addresses as their respective *domicilium citandi et executandi* for purposes of this MOU:

**The Competition Commission:**

Block C, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, 0002

Contact Person: Mrs Khanyisa Qobo, Manager: Advocacy Division

**The Financial Sector Conduct Authority:**

Riverwalk Office Park, Block B, 41 Matroosberg Road, Ashlea Gardens, Extension 6,  
Pretoria, 0081

Contact Person: Ms Kershia Singh, Head of Department: Policy Support

RegL@fsca.co.za

**Signatures****For: Competition Commission SA**Signed at Pretoria on this 14th day of December 2023 by

Ms. Doris Tshepe, Commissioner of the Competition Commission South Africa.



COMPETITION COMMISSION

WITNESS 1

WITNESS 2

**For: Financial Sector Conduct Authority**Signed at PRETORIA on this 8<sup>th</sup> day of SEPTEMBER by

Mr. Unathi Kamlana, Commissioner of the Financial Sector Conduct Authority



FINANCIAL SECTOR CONDUCT AUTHORITY



WITNESS 1



WITNESS 2