

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NATIONAL BANK OF SLOVAKIA
AND THE
MALTA FINANCIAL SERVICES AUTHORITY

Recitals

- A The Malta Financial Services Authority (“MFSA”) is a public authority established by an Act of Parliament (the Malta Financial Services Authority Act, as amended). It has statutory powers of licensing, supervision and investigation, and has the ability to exercise its powers for the purpose of co-operation with foreign authorities. The MFSA is responsible for the regulation and supervision of credit and financial institutions, the business of insurance and insurance intermediaries’ activities, investment services, collective investment schemes, retirement funds, trustees, regulated markets and central securities depositories. It also incorporates the Registry of Companies.
- B The National Bank of Slovakia (“NBS”) is a public authority established by an Act of the National Council of the Slovak Republic on the NBS. It has statutory powers of licensing, supervision and investigation, and has the ability to exercise its powers for the purpose of co-operation with foreign authorities. The NBS is responsible for the regulation and supervision of credit and financial institutions, the business of insurance and insurance intermediaries’ activities, investment services, collective investment schemes, retirement funds, regulated markets and central securities depositories.
- C Under the laws of their respective jurisdictions, both the NBS and the MFSA have been appointed as the single regulatory authorities for the regulation and supervision of their financial services sectors. Accordingly, the NBS and the MFSA wish to expand on the scope of the MoU signed by both Authorities on the 12th February 2004, concerning their co-operation in the field of banking supervision, to enable them to more effectively perform their functions in the regulation and supervision of insurance, banking and securities activities. This MoU will continue to provide the NBS and the MFSA with a formal basis for co-operation, including for the exchange of information and investigative assistance.

Operative Part

Definitions

1. For the purposes of this Memorandum, the following expressions shall have the following meaning:

“Applicable laws, regulations and requirements”	means any law, regulation or requirement applicable in Malta and, or in the Slovak Republic, and where the context permits this includes any rule, direction, requirement, guidance or policy made or given by or to be taken into account by the Authority.
“Authority”	means the MFSA or the NBS.
“Requesting Authority”	means an Authority making a request for assistance under this MoU.
“Requested Authority”	means an Authority to whom a request for assistance is made under this MoU.
“Branch”	means a legally dependent unit of a Credit institution or Financial institution, which has its head institution in the territory of the Home-Country Authority and is established in the territory of the Host-Country Authority.
“Credit institution”	an entity licensed as a “credit institution” under the Maltese Banking Act, 1994, or an entity licensed as under the Slovak Banking Act, 2001 respectively.
“Financial institution”	means a natural person or legal entity that is licensed as a “financial institution” under the relevant Maltese and Slovak legislation.
“Cross-border establishment”	means a Branch, Representative office, or Subsidiary of any Credit institution or of any Financial institution, operating in the territory of one of the Authorities and having its head or parent institution in the territory of the other Authority.
“Home-Country Authority”	means the Authority responsible for supervising (a) in the case of a Branch or Representative office, the Credit institution or Financial institution which set up the Branch or

- Representative office in the jurisdiction of the Host-Country Authority; or
- (b) in the case of a Subsidiary of a Credit institution or Financial institution, the parent institution.

“Host-Country Authority”	means the Authority responsible for supervising Credit institutions or Financial institutions in the country where the Cross-border establishment is set up.
“MoU”	means this Memorandum of Understanding.
“Person”	means a natural person, legal entity, partnership or unincorporated association.
“Representative office”	is an office through which the interests of a Credit institution or Financial institution are promoted or assisted but at which no actual business is carried on.
“Subsidiary ”	means a subsidiary company of a Credit institution or Financial institution

Purpose and Principles

2. The purpose of this MoU is to expand on the scope of the MoU signed by both Authorities on the 12th February 2004, concerning their co-operation in the field of banking supervision, thereby establishing a formal basis for-cooperation in all regulated sectors, particularly the regulation and supervision of insurance, banking and securities activities. This MoU shall not affect any arrangements under other bilateral or multilateral MoUs, except for the above-mentioned MoU dated 12th February 2004.
3. This MoU is not considered to be an international agreement within the meaning of the laws applicable in, or applying to, Malta and the Slovak Republic, and it does not establish any legally binding obligations or supersede any laws and regulations in force in either jurisdiction.
4. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under Applicable laws, regulations and requirements.

Requests for assistance

5. If a request for assistance is made relating to a Cross-border establishment or to any Person carrying out licensable activities, each Authority will use reasonable efforts to

provide assistance to the other, subject to its laws and overall policy. Assistance may include, for example:

- (a) providing information in the possession of the Requested Authority;
 - (b) confirming or verifying information provided to it for that purpose by the Requesting Authority;
 - (c) exchanging information on or discussing issues of mutual interest such as: financial soundness (failure to meet capital adequacy or other financial requirements, significant losses, rapid decline in profits or a deterioration in profitability), compliance or control procedures, an incipient crisis relating to any Person carrying out licensable activities which has Cross-border establishments;
 - (d) obtaining specified information and documents from persons;
 - (e) questioning or taking testimony of persons designated by the Requesting Authority;
 - (f) conducting inspections or examinations of financial services providers or arranging for the same; and
 - (g) permitting the representatives of the Requesting Authority to participate in the conduct of enquiries made by or on behalf of the Requested Authority.
6. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further details will be contained in the request:
- (a) a description of the conduct or suspected conduct which gives rise to the request;
 - (b) details of the Applicable laws, regulations or requirements to the administration of which the request is relevant;
 - (c) the link between the specified rule or law and the regulatory functions of the Requesting Authority;
 - (d) the relevance of the requested assistance to the specified Applicable laws, regulations and requirements.

Procedure for Requests

7. Requests for the provision of information or other assistance will be made in writing, or made orally and, unless otherwise agreed, confirmed in writing by the Requesting Authority within ten business days. To facilitate assistance, the Requesting Authority should specify in any written request:
- (a) the information or other assistance requested (identity of persons, specific questions to be asked, etc.);
 - (b) if information is provided by the Requesting Authority for confirmation or verification, the information and the kind of information or verification sought;
 - (c) the purpose for which the information or other assistance is sought;
 - (d) to whom, if anyone, onward disclosure of information provided to the Requesting Authority is likely to be necessary and, in relation to onward disclosure to a person who is not a permitted onward recipient, the purpose such disclosure would serve;
 - (e) any other matters specified by the Requested Authority and by the Applicable laws, regulations and requirements in relation to the Requested Authority.

Assessing requests

8. Each request for assistance will be assessed on a case-by-case basis by the Requested Authority to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or in whole, the Requested Authority will consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.
9. In deciding whether and to what extent to fulfill a request, the Requested Authority may take into account:
 - (a) whether the request conforms with this MoU;
 - (b) whether the request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the Requested Authority;
 - (c) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the Requested Authority's functions;
 - (d) whether it would be otherwise contrary to the public interest, the state's security or the essential national interest of the Requested Authority's jurisdiction to give the assistance sought;
 - (e) if the request for assistance is for the purpose of actual or possible enforcement action, whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a Person who in the opinion of the Requested Authority has already been appropriately dealt with in relation to the alleged breach forming the subject-matter of the request;
 - (f) any other matters specified by the laws, regulations and requirements of the Requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and
 - (g) whether compliance with the request may otherwise be prejudicial to the performance by the Requested Authority of its functions.

Provision of unsolicited information

10. The Authorities may provide information on a voluntary basis, even though no request has been made.

Financial Crime

11. The Authorities will co-operate closely when they identify any suspected financial crime, particularly concerning money laundering and terrorist financing, in supervised institutions which carry out cross-border activities in their respective countries. This co-operation shall also include the prevention and combating of unauthorised business, such as the provision of banking services without the necessary licence. Although the main competences for the prosecution of financial crime rest with other bodies, the Authorities will co-operate on such matters within their respective competences and responsibilities. One Authority may accordingly need to pass on information received from the other Authority, with the prior consent of the latter, to other bodies in its jurisdiction for regulatory or law enforcement purposes.

Co-operation on Credit institutions, Financial institutions and their Cross-border establishments

12. The Authorities intend to co-operate, among other areas, in the supervision and regulation of Cross-border establishments and of Credit institutions and Financial institutions which own or control such establishments, and the provisions of this sub-title are specifically intended to cover this area of their activity. The scope of such co-operation shall include the licensing (both issuance and revocation), as well as the ongoing supervision and regulation of Cross-border establishments.
13. The Host-Country Authority shall immediately inform the Home-Country Authority on receiving an application for the authorisation of a Branch or a Subsidiary .
14. The Home-Country Authority shall, upon being so informed, exchange any relevant information with the Host Country Authority, including information on the amount of own funds and the capital adequacy ratio of the Credit institution or Financial institution setting up the Branch or Subsidiary, whether the Credit institution or Financial institution is fully compliant with the Applicable laws, regulations and requirements, and whether there exists any adverse information on its ability to run the Cross-border establishment in an orderly and proper manner. The Home-Country Authority shall promptly disclose any adverse information, such as information impinging on the fitness and properness of the prospective managers or directors of the Cross-border establishment, to the Host-Country Authority.
15. The Authorities shall consult each other when assessing the acquisition of a qualifying shareholding or interest in a Credit institution or Financial institution, as defined under the Applicable laws, regulations and requirements of the respective Authorities' jurisdiction, by a Person within the jurisdiction of the other Authority. The Authorities shall likewise consult when assessing the acquisition of a qualifying shareholding or other interest in a Cross-border establishment.
16. The NBS and the MFSA shall inform each other, in good time and to the extent reasonable, about any event which has the potential to endanger the stability of Credit institutions or Financial institutions having Cross-border establishments in the respective other country, or of an incipient crisis relating to such a Credit institution, Financial institution or Cross-border establishment. They will also notify each other on administrative penalties and sanctions which they have imposed and on any other regulatory action taken that is relevant to the other Authority.
17. Without prejudice to the above paragraphs, the Authorities agree to co-operate and exchange any other significant information on Credit institutions or Financial institutions having Cross-border establishments in their respective jurisdictions which might be relevant to either Authority, as well as on Credit institutions and Financial institutions exercising their freedom to provide services within their respective jurisdictions. This co-operation shall include matters such as concerns about the financial soundness of an institution (failure to meet capital adequacy or other financial requirements, significant losses, rapid decline in profits or a deterioration in profitability), concerns relating to compliance or control procedures, concerns arising from supervisory visits, prudential interviews or reports from and communications with an institution or other regulatory

body, concerns arising from late or inaccurate prudential returns and concerns relating to supervisory arrangements in third countries.

Customer complaints

18. Complaints made with an Authority about any licensed or authorised Person should be handled by the relevant authorising Authority. If, as a result of any such complaint, any information comes to the attention of either the NBS or the MFSA which is of supervisory relevance to the other Authority, the NBS and the MFSA will ensure that this information is properly communicated.
19. In this MoU, reference to issues of supervisory relevance does not include disputes ensuing from purely contractual relations between licenced Persons, Cross-border establishments and their clients, the review of which or decisions on which fall within the jurisdiction of the Civil Courts, arbitration panels or other authorities under separate laws, as the case may be, in the respective jurisdictions.

On-site inspections

20. The Authorities agree that co-operation is particularly useful in assisting each other in carrying out an on-site inspection of Cross-border establishments and licensed Persons conducting business operations in or from the jurisdiction of the Requesting Authority. Subject to article 21, the Authorities will allow each other to carry out an inspection of such Persons and of Cross-border establishments within their respective jurisdictions.
21. The Authorities shall notify each other of requests for an on-site inspection at least one month in advance, except in very urgent cases, giving details of the names of the inspectors, the purpose of the inspection, and its expected duration. At the discretion of the Requested Authority and in accordance with the Applicable laws, regulations and requirements in each jurisdiction, on-site inspections may be carried out by the Requesting Authority independently or jointly with the Requested Authority. If an inspection is carried out independently, the Requesting Authority will keep the other Authority informed on the results of the inspection, to the extent reasonable and in a timely manner. If the findings of an inspection are relevant to the Requested Authority, the Requesting Authority will provide the other Authority with a summary report on its findings and any regulatory or enforcement action envisaged.

Professional secrecy

22. Compliance with the obligation of professional secrecy by all employees of the Authorities, including former employees, who receive confidential information from the other Authority in the course of their activities, is a necessary condition for successful co-operation. The Authorities agree that any confidential information shared pursuant to this MoU will be used only for lawful supervisory purposes.
23. To the extent permitted by law, the Authorities shall maintain the confidentiality of all information received pursuant to this MoU, including any assistance provided, and shall not disclose such information to third parties without obtaining the prior written consent of the other Authority. The Authorities will, when receiving a legally enforceable request for

information that has been obtained from the other Authority or information acquired in the course of an on-site inspection in the other Authority's jurisdiction, promptly notify the other Authority of the request and will co-operate in seeking to preserve the confidentiality of such information.

24. The obligation of the Authorities to maintain professional secrecy shall remain in effect even after the termination of this MoU.

Contact persons

25. To facilitate co-operation the Authorities shall, within 20 days following the entry into force of this MoU, exchange lists of the contact persons authorised to provide and request information on behalf of the NBS and the MFSA pursuant to this MoU. The list shall contain at least the following data: name and surname, position in the respective Authorities, mailing address, e-mail address, and telephone and fax numbers of the authorised contact persons.

Costs

26. If the cost of fulfilling a request is likely to be substantial, the Requested Authority may, as a condition for agreeing to give assistance under this MoU, require the Requesting Authority to make a contribution to costs.

Consultation

27. In order to enhance the quality of co-operation and review the effectiveness of these arrangements, representatives of the NBS and the MFSA may periodically convene to discuss issues concerning licensed Persons and Cross-border establishments within their respective jurisdiction.
28. The NBS and the MFSA shall seek ways of promoting further co-operation through visits for informational purposes and by short exchanges of staff for internships.
29. Further information on the Authorities and their activities, including lists of licensed Persons in their jurisdiction, is available from their respective internet websites. The MFSA website address is: www.mfsa.com.mt, while the NBS website address is: www.nbs.sk.
30. The Authorities shall advise each other on any aspect of their regulatory systems that is relevant to this MoU and inform each other of any major changes to the Applicable laws, regulations and requirements such as those which have a significant bearing on the activities of Cross-border establishments and of licensed Persons operating in or from their respective jurisdictions.
31. The Authorities do not oppose to making this Memorandum publicly available on their respective web sites.

Commencement

32. This MoU is drawn up in the English language in two copies, both copies being original. Each Authority shall retain a copy.
33. This MoU shall take effect when it is signed by the representatives of both Authorities. On its entry into effect this MoU shall replace the present MoU between the Authorities and signed on 12th February 2004. The entry into effect of this MoU shall be without prejudice to any pending requests for information or other collaboration made by any of the Authorities prior to such date.
34. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, the MFSA or the NBS. This MoU sets forth a statement of intent and accordingly does not create any enforceable rights. This MoU does not affect any arrangements under other MoUs.

Amendments to the Memorandum and Termination

35. This MoU shall remain in existence until either party notifies the other in writing of its wish to revise, amend or terminate it by giving at least thirty (30) days advance written notice.
36. If either Authority notifies the other of its intention to terminate this MoU, co-operation and assistance in accordance with this MoU will continue with respect to all requests for assistance that were made before the effective date of notification, unless the Requesting Authority withdraws its request for assistance.

SIGNED at Bratislava, on 1st of December, 2011

For the **National Bank of Slovakia:**

Jozef Makúch
Governor

For the **Malta Financial Services Authority:**

Prof. J.V. Bannister
Chairman