

MEMORANDUM OF UNDERSTANDING

Between

THE CENTRAL BANK OF ESWATINI

Herein duly represented by Mr. Majozi Sithole in his capacity as the
Governor of Central Bank)

“the Bank”

ESWATINI COMPETITION COMMISSION

(Herein duly represented by Mr. Muzi Dlamini in his capacity as the Chief
Executive Officer for the Eswatini Competition Commission)

“The Commission”



Eswatini
Competition Commission



CENTRAL BANK
OF ESWATINI
Umntsholi Wemaswati

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PREAMBLE:

WHEREAS the Central Bank of Eswatini herein referred to as “the bank” is an independent entity, mandated with statutory powers to amongst others: regulate and supervise the financial sector, the formulation and implementation of monetary policy & ensuring the overall stability of the financial system, the control, supervision and regulation of all financial banking institutions as well as the regulation and oversight of payment and settlement services.

WHEREAS the Eswatini Competition Commission herein referred to as “the Commission” is an independent entity, mandated with statutory powers to promote competition through the prevention and control of anti-competitive trade practices, regulation of mergers & acquisitions and protecting consumer welfare.

WHEREAS the Bank and the Commission herein jointly referred to as the “the parties” are desirous to co-ordinate and harmonize the exercise of their jurisdiction over matters of mutual interest and to secure the consistent application of their respective laws governing anti-competitive behavior, unfair trading as well as mergers and acquisitions in the banking and payments industry on the basis of the procedures outlined in this Memorandum of Understanding (MoU).

NOW THEREFORE the parties hereby enter into the MoU under the following terms and conditions:

1. PURPOSE AND PRINCIPLES

1.1 This Memorandum of Understanding (MoU) establishes a high level framework in terms of which the Bank and the Commission will co-ordinate and co-operate in carrying out their respective mandates and seeking to;

- a) harmonize approaches where appropriate and to avoid confusion or misunderstanding as to their respective roles and minimize the duplication

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of activities in so far as they relate to the exercise of their related functions;

- b) promote and maintain fair competition and a stable financial environment;
- c) promote co-operation and co-ordination between the parties when dealing with cases of anti-competitive behavior, unfair trading as well as to facilitate the treatment of mergers and acquisitions within the banking sector; and
- d) improve understanding of their respective roles by undertaking general studies on the effectiveness of competition within the banking sector.

1.2 This MoU is entered into in order to facilitate the manner in which the parties will interact and cooperate with each other with the understanding that the laws applicable to each entity are different, but complementary in so far as dissuading anti-competitive practices.

1.3 The MoU is for purposes of co-operation and is not intended to create legal or binding obligations on either party.

2. COOPERATION

2.1 Given the complementarity of the powers and responsibilities of the two entities relating to the regulation of competition in the financial banking institutions sector, the Bank and Commission agree, to the extent permissible by law, to co-operate on the following areas;

- a) To consult each other on any competition policy or related issues that might have implications for either party.
- b) Co-ordination on competition issues impacting on financial stability and the integrity of the financial system.
- c) Provision of technical opinions and comments in the development, drafting and reviews of legal and regulatory instruments impacting on competition within the banking financial sector, including banking, payments & settlements and remittances services.

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- d) Cooperate and collaborate on initiatives aimed at promoting consumer protection including, but not limited to, joint education initiatives and identification of vulnerable groups.
- e) Collaborate and exchange information relating to the parties' regulatory roles and responsibilities on competition issues within the banking financial sector, including but not limited to, legislative developments, reducing regulatory overlaps and arbitrage as well as identifying gaps and inconsistencies in the application and administration of competition laws within the financial banking institutions and payments/settlements sector laws.

2.2 With a view to observing the principles set out in 2.1 above, the parties will ensure to the extent permissible in law, that there is an appropriate and timely flow of information between them.

3. EXCHANGE OF INFORMATION

3.1 Each party will, upon request, as far as practicable and where it agrees that the request is reasonable, furnish to the other party, subject to the extent permissible in law, information in its possession of the kind specified in a request for information.

3.2 Requests for information shall be made in writing ("writing" includes electronic mail) to the designated contact person of either party.

4. COMPLAINTS RELATED TO RESTRICTIVE BUSINESS PRACTICES, ANTI-COMPETITIVE BEHAVIOUR AND CONSUMER COMPLAINTS

Where a complaint is lodged pertaining to, or where the parties identify restrictive business practices, anti-competitive business practice and consumer complaints involving either of the following sectors; the banking financial, payments & settlement and remittances, the following process shall be followed:

- a) The party that receives the complaint ("the Recipient") shall ensure that the complaint is made available to the other party within seven (7) working days (excluding weekends and public holidays);

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- b) The Recipient shall inform the complainant(s) that the matter will be discussed jointly by the parties in order to establish how the complaint is to be dealt with;
- c) The parties shall consult with each other and evaluate the complaint in order to establish whether the matter will be dealt with by either or both parties;
- d) The Recipient shall advise the complainant(s) of the decision resulting from the joint discussion between the parties;
- e) The Recipient shall give the complainant(s) further directions regarding the outcome of the complaint in question;
- f) In the event that the matter is allocated to the Commission, delegates from the Bank may participate in an advisory capacity in the matter, and *vice versa*; and
- g) The parties may establish joint working committees in the event that it is decided to deal with a matter jointly.

5. MERGERS AND ACQUISITIONS

5.1 Where a merger transaction requires the approval of both parties, the merging parties shall submit separate and concurrent applications to the Commission (in accordance with the Competition Act) and to the Bank (in accordance with the Financial institutions Act) for their respective consideration.

5.2 The parties shall thereafter make independent determinations on the basis of the criteria and mandates of their respective legislation. In arriving at these determinations the parties may consult each other.

6. CONFIDENTIALITY

6.1 The parties recognize that the exchange of information between them will be an important contribution to the efficient and effective discharge of their duties in promoting competition within the sector and the protection of consumers.

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6.2 The parties are conscious of the need for discretion and for the adoption of procedures that protect; the confidential nature of certain information and the professional secrecy obligations of the Bank under section 20 of the Central Bank Order of 1974 and section 22 of the Competition Act 2007, to which the terms of this Memorandum are subject.

7. MEETINGS

7.1 In order to give operational effect to this MoU and discuss matters of mutual interest, the parties will meet at least biannually.

7.2 The bi-annual meetings should however not detract from the parties convening any other operational meetings upon written request.

8. COMMUNICATION AND NOTICES

Notices with respect to this MoU shall be served on designated contact person of the parties.

9. COMMENCEMENT AND DURATION

This MoU shall commence on the date of signature and shall remain in force for a period of three (3) years from such date, with the option to renew or extend it further, by agreement between the Parties.

10. TERMINATION

10.1 The MoU may be terminated by either party by giving two (2) months' written notice to the other party of its intention to terminate.

10.2 The parties agree that termination of this MoU shall not prejudice any of the foregoing cooperative initiatives and undertake to take measures to complete existing activities prior to the date of termination.

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11. AMENDMENT

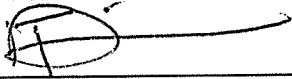
This MoU may be amended and/ or varied from time to time as circumstances of its implementation may compel, provided that such amendment shall not come into force unless and until agreed upon by both parties.

12. DISPUTE SETTLEMENT

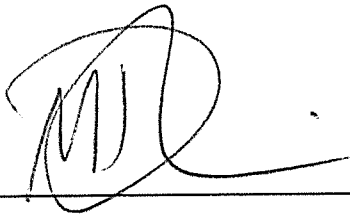
In the event of any dispute or difference arising out of or relating to the implementation of this MoU, the parties shall use their best endeavours to settle such dispute or difference amicably through negotiation.

THUS DATED AND SIGNED BY THE PARTIES AND WITNESSED AT MBABANE ON THIS THE 02 DAY OF December, 2020.

AS WITNESSES:

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2. 



MR. MUZI DLAMINI

CHIEF EXECUTIVE OFFICER

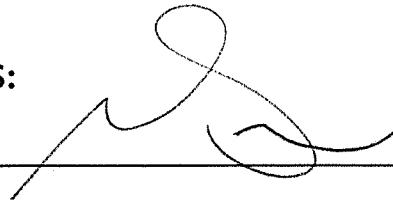
ESWATINI COMPETITION

COMMISSION

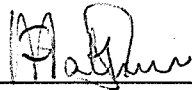
THIS DATED AND SIGNED BY THE PARTIES AND WITNESSED AT MBABANE ON
THIS THE 02 DAY OF December, 2020.

AS WITNESSES:

1.



2.





MR. MAJOZI SITHOLE

GOVERNER

CENTRAL BANK OF ESWATINI