



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE BOTSWANA UNIFIED REVENUE SERVICE

AND

THE COMPETITION AUTHORITY

THIS MEMORANDUM OF UNDERSTANDING is made this 28th day of June Two Thousand and Seventeen and is intended to reflect the position reached by BOTSWANA UNIFIED REVENUE SERVICE (herein after referred to as "BURS") and COMPETITION AUTHORITY (hereinafter referred to as "CA"), and collectively referred to, in context, as "the Parties").

RECOGNISING that the Honourable Minister of Finance and Economic Development by virtue of the powers vested in him under the Value Added Tax Act (Cap 50:03) has authorised the disclosure of tax information to the Competition Authority and for the Parties to enter into administrative arrangements to facilitate such disclosure.

WHEREAS BURS is established under Section 3 of the Botswana Unified Revenue Service Act with the principal object of assessing and collecting tax on behalf of the Government.

Furthermore, Section 4 of the BURS Act has laid down the following functions of BURS as follows:

- a) To administer and enforce revenue laws;
- b) To promote compliance with the revenue laws;
- c) To take such measures as may be required to improve service given to taxpayers with a view to improving efficiency and maximising revenue collection;
- d) To take such measures as may be required to counteract tax fraud and other forms of tax evasion;
- e) To advise the Minister on matters relating to the administration and collection of tax; and
- f) To perform such other functions in relation to tax as the Minister may direct.

WHEREAS CA 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 5(2) (m) empowers the Authority to authorize with or without conditions, mergers of which it receives notification under Part X of the Act, of which Section 56(1) and (3) empowers the Authority to;

- a) receive notification of a proposed merger from the parties;
- b) subject to the protection of confidential information, publish details of the notification; and
- c) request for further information in writing from anyone.

AND WHEREAS Under Section 73 of the Competition Act, there is a general expectation for regulators to establish a mechanism through which they can maintain regular contact regarding the exercise of their respective responsibilities. The success of BURS in its operations is similarly premised on its ability to secure information from third parties under various provisions of the revenue laws including from institutional regulators. To this end CA and BURS have found it necessary and prudent to enter into a Memorandum of Understanding (herein referred to as the MOU) for the purpose of discharging their respective functions.

NOW THEREFORE, the Parties now agree to conclude this Understanding as follows:

1. BASIS OF THIS UNDERSTANDING

1.1. The assessment and collection of tax is the backbone of the economic strength of Botswana and its fiscal policy. It is therefore

imperative that all economic enterprises operating within the market economy are tax compliant.

- 1.2. The keeping and maintenance of tax records and any other relevant confidential information on enterprises by BURS is seen as a source of valuable data by CA, which, pursuant to the MOU could be shared by the Parties.
- 1.3. The keeping of information on mergers and takeovers for purposes of monitoring and regulating anti-competitive practices by CA is a source of valuable information for BURS for purposes of determining correct taxable income of companies.
- 1.4. The MOU does not limit BURS or CA from taking any steps to establish other MOUs with any other institutions that may be relevant to their functions.

2. SCOPE OF COOPERATION AND INFORMATION SHARING

- 2.1. The Parties shall endeavour 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 herein described.
- 2.2. Areas of coordination, cooperation or information sharing shall include, but are not limited to:
 - 2.2.1. Providing each other with valuable and useful information pertaining to any enterprises which at the material time may have notified CA of a merger or acquisition either when

requested by the other Party or proactively by any Party without a request being made;

2.2.2. Assisting each other with investigations;

2.2.3. Consulting each other on a regular basis on matters of mutual interest;

2.2.4. Seeking clarification from each other on any media reports that may be related to matters connected with or incidental to the MOU;

2.2.5. Availing to each other any useful findings of any investigation that may assist the other Party; and

2.2.6. Appearing in Court or other judicial and quasi-judicial bodies as expert witness or to provide evidence in relation to their specific competency provided that there is no conflict with the governing laws and internal procedures of either Party.

3. REQUESTS FOR INFORMATION

3.1. All requests for information shall be in writing and signed by the Heads of the Parties or their designated officers.

3.2. The request for information shall specify the following:

3.2.1. A general description of the information sought by a Party;

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3.2.2. A general description of the matter which is the subject of the request and the purpose for which the information is sought; and

3.2.3. The desired time period for reply and, where appropriate, the reasons for the urgency thereof. In such urgent situations, the Parties will 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.

3.3. The requested Party may, where necessary, seek clarity on the information sought by the requesting party.

4. OPERATIONAL PROCEDURE FOR REQUESTS

4.1. Each request for information or assistance will be assessed on a case by case basis by the requested Party to determine whether assistance can be provided under the terms of this MOU.

4.2. In deciding whether and to what extent to fulfil a request, the requested Party may take into account the following:

4.2.1. Whether the request conforms to this MOU.

4.2.2. Whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Party's other functions.

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- 4.2.3. Whether it would be contrary to public interest to give the assistance sought.
- 4.2.4. Whether it would be contrary to the laws, regulations and internal procedures and policies of the requested Party to give assistance sought.
- 4.3. Where necessary the requested Party may assemble a team to work with a team from the requesting Party during the assignment/request period.
- 4.4. Where the Party to whom a request is made considers that it is unable to provide some or all of the information requested, that party will provide the requesting party with reasons for that position.
- 4.5. In any case where the request cannot be fulfilled in part or whole, the requested Party will consider whether there may be other assistance that can be provided to the requesting Party.

5. HANDLING OF CONFIDENTIAL INFORMATION

- 5.1. Any information communicated in any form under this MOU shall be treated as confidential and shall be accorded protection and confidentiality similar to that accorded to the same kind of information under the governing laws and regulations of the Party supplying the information. Any restriction in the use of the information shall be notified in writing to the Party receiving that information.

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- 5.2. The provisions of clause 5.1 above shall not apply in respect of information that becomes public knowledge without the involvement of either Party.
- 5.3. Each Party or its employees shall keep confidential all information which comes to it relating to the performance of the service or business function of either Party even where it is not relevant for the performance of the services. Each Party will disclose information to its employees, officers, approved valuers/sub-contractors and agents who either need to know it for the purpose of exercising or performing its rights and obligations under this MOU, and are informed of the confidential nature of the information divulged; and agree to act in compliance with this MOU.
- 5.4. Neither Party shall disclose information to any third party (other than its employees, officers, approved sub-contractors/valuators and agents in accordance with this clause) except for information that is already in the public domain at the time of disclosure, or becomes publicly known through no fault of its own employees, or is acquired by that third party without any breach of any obligation of confidence.
- 5.5. Notwithstanding any other provision of this MOU, it shall not be breach of this MOU by either Party to disclose information given to it in connection with this MOU pursuant to a court order or a binding request from a regulatory body or other analogous authority with jurisdiction or from any other third party with statutory power to require the disclosure of such information, provided that the affected Party with statutory power to require

the disclosure of such information gives a reasonable notice of such disclosure to the other Party.

- 5.6. This MOU may be quoted by any Party to it.
- 5.7. Unless otherwise expressly stated herein, all information sought or exchanged shall be deemed to be usable by the receiving Party according to the legal framework/s governing them.

6. SHARING RESOURCES

The Parties may, where necessary and with prior arrangement, share each other's available resources in order to bring the provisions of this MOU into full effect; provided such a process is reasonable, shall not compromise the respective security of the Parties and does not contravene any statute with which the two Parties must conform.

7. STATUTORY LIMITATIONS

- 7.1. The provision of, or request for, information under this MOU may be denied:
 - 7.1.1. Where compliance would require a Party to act in a manner that would violate any law in Botswana;
 - 7.1.2. Under circumstances where there is an imminent risk to national security or other overriding public interest; or
 - 7.1.3. When compliance with a request or provision of information would interfere with an ongoing investigation in circumstances

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where prejudice to the investigation is likely to outweigh the adverse effects of denying the information.

- 7.2. No provision of this MOU shall 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.

8. FINANCIAL MATTERS

- 8.1. Each Party shall bear their own costs incurred in the process of securing information pursuant to the MOU and shall factor the aspects of this MOU in their respective budget unless such costs are voluntarily borne by the other.
- 8.2. The financing of cooperation projects should be decided by mutual consultation and agreement, according to the specific nature of each project.
- 8.3. This MOU, or any annexure that may be developed under this MOU, does not represent any commitment with regard to funding on the part of either BURS or CA. Any such commitment may be reflected in a separate arrangement as mutually decided by the Parties.

9. VARIATION OF THE MOU

Any variation of this MOU shall have no legal effect and shall not be binding on the Parties unless reduced to writing and signed by Heads of the Parties or their designated officers to act on behalf of the Parties.

10. COMMENCEMENT

This MOU shall come into force on the date on which it is signed by persons authorised to act on behalf of both the Parties.

11. DURATION AND TERMINATION

11.1. This MOU shall remain in force until it is terminated by either Party.

11.2. Either Party may terminate this MOU without cause upon ninety (90) days' written notice to the other.

11.3. Upon receipt of notice of termination of this MOU, the Parties will take all reasonable and necessary measures to conclude any activities already commenced in accordance with MOU.

11.4. The provisions of this MOU will survive any termination, to the extent necessary to permit an orderly settlement of accounts between the Parties.

12. DOMICILIUM CITANDI ET EXECUTANDI

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

BOTSWANA UNIFIED REVENUE SERVICE

Private Bag 0013

Gaborone

PLOT 53976 Kudumatse Road

TEL: +267 3638000

FAX: +267 3953101

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Email:

THE COMPETITION AUTHORITY

Private Bag 00101

Gaborone

PLOT 28, Matsitama Road.

TEL: +267 393 4278

FAX: +267 312 1013


EMAIL: competitionauthority@gmail.com

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AS WITNESS the hands of the duly authorized representatives of the Parties
the day and year first before written

SIGNED by the COMMISSIONER GENERAL -----For and on
behalf of **BURS**


In the presence of:

WITNESS: -----
Name:..... LAWRENCE MASUKOTI
Address:..... Plot 53976 KUDUMATSE ROADS
Designation:..... ACTING DIRECTOR LEGAL SERVICES

SIGNED by the ACTING CHIEF EXECUTIVE OFFICER -----

For and on behalf of **COMPETITION AUTHORITY**

In the presence of:

WITNESS: -----
Name:..... GOSUPANANG DATSI MASIE
Address:..... PLOT 28, MATSITAMA ROAD.
Designation:..... ACTING DIRECTOR, LEGAL & ENFORCEMENT