



**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE**

**FAIR TRADING COMMISSION**

**AND**

**DEVELOPMENT BANK OF JAMAICA LIMITED**

## **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING** (hereinafter referred to as “**MOU**”) is made and entered into between the **FAIR TRADING COMMISSION** (hereinafter referred to as “**FTC**”), a body corporate established pursuant to Section 4 of The Fair Competition Act and whose office and place of business is located at 52-60 Grenada Crescent, Kingston 5 in the parish of St. Andrew and **DEVELOPMENT BANK OF JAMAICA LIMITED** (hereinafter referred to as “**DBJ**”), a company incorporated under the Companies Act and having its registered office at 11A – 15 Oxford Road, Kingston 5 in the parish of St. Andrew. FTC and DBJ are also referred to individually in this MOU as an “Agency or Party” and collectively as the “Agencies or Parties.”

### **1. PURPOSE**

The purpose of this MOU is to facilitate the mutual exchange and sharing of information concerning cooperation in matters of mutual interest.

### **2. BACKGROUND**

#### **Fair Trading Commission**

2.1 The FTC was established in 1993 and is the administrative body responsible for enforcing the Fair Competition Act (FCA). The FTC is an agency of the Ministry of Industry, Commerce, Agriculture, and Fisheries. The mission of the FTC is to provide for the maintenance and encouragement of competition in the conduct of trade, business and in the supply of services in Jamaica, with a view to providing consumers with competitive prices and product choices.

2.2 The functions of the FTC include the following:

- To carry out, on its own initiative or at the request of the Minister or any other person, investigations in relation to the conduct of business in Jamaica in connection with matters falling within the provisions of the FCA;
- To advise the Minister on matters relating to the operation of the FCA;
- To make available to businesses and consumers, general information with respect to their rights and obligations under the FCA;
- To undertake studies and publicize reports and information regarding matters affecting the interests of consumers; and
- To cooperate with and assist any association in developing and promoting the observance of standards of conduct to ensure compliance with the FCA.

## **Development Bank of Jamaica Limited**

2.3 DBJ is an agency of the Ministry of Economic Growth and Job Creation. The mission of DBJ is to provide opportunities to all Jamaicans to improve their quality of life through development financing, capacity building, public-private partnership, and privatisation solutions in keeping with Government policy.

2.4 DBJ carries out its role by providing funding and technical assistance to large projects and micro, small, and medium-sized enterprises (MSME). Its funds are channeled through a network of Approved Financial Institutions (AFI), including commercial and merchant banks, Credit Unions, National People's Cooperative Bank (NPCB), National Export-Import Bank and Micro Finance Institutions (MFI), which provide the initial credit evaluation and loan supervision before on-lending to clients.

2.5 The functions of the DBJ include the following:

- Ensuring that low-cost funds for business projects are available to all viable (MSMEs & Large) enterprises in the productive sectors.
- Increasing demand for development finance by strengthening the capacity of MSMEs to borrow, invest, and expand.
- Managing and executing the Government of Jamaica's (GOJ) Public-Private Partnership and Privatisation programmes, through which entrepreneurship is developed, and the ownership base of public entities is broadened.
- The development and implementation of viable and sustainable venture capital and private equity industry in Jamaica to provide access to long-term, patient financing required by small and medium-sized enterprises and innovative start-ups, for sustained growth and development.

## **3. AGREEMENTS BETWEEN THE PARTIES**

### **Establishment of Framework**

3.1. This MOU shall establish the manner in which the Agencies will interact and cooperate with the understanding that the laws applicable to each Agency, although different, may be complimentary. It shall establish a framework whereby the FTC and DBJ will seek to work together through:

- Consultation on matters of Public-Private Partnership and Privatisation that may negatively impact competition.



- Coordination on agency initiatives where one agency's action will have a significant effect on the other agency's authority or programs.
- Sharing of relevant data, intelligence, technical and legal expertise, and best practices in response to reasonable requests for such assistance.

#### **4. Scope of Cooperation**

This MOU establishes a framework whereby the FTC and DBJ will seek to:

- Ensure that potential market participants have equal opportunity to benefit from capacity building initiatives provided by DBJ.
- Ensure that DBJ's management and execution of the GOJ's Public-Private Partnership and Privatisation programmes are consistent with the competition law and policy.
- Jointly use advocacy techniques to halt or prevent harm to competition.

#### **5. Guiding Policy**

This MOU may be used in varying circumstances, including but not limited to, the following:

- At an early stage, consult on the creation and implementation of policy, monitoring mechanisms, or actions to consider issues that could harm or encourage competition within related markets.
- Sharing of knowledge-based and/or capacity building activities where appropriate.
- Regular coordination meetings to review current marketplace practices.

#### **6. Information Sharing**

The FTC and DBJ acknowledge the benefits of sharing information that will assist each organization in performing its functions and exercising its powers. The following shall guide the information sharing by the Agencies:

- Where appropriate, the FTC and DBJ will share information relevant to policy development and proposed privatization processes, including training and workshop sections.
- Where the situation necessitates close cooperation and information sharing between the Agencies, the situation shall be managed in such a way that each Agency shall endeavor to assist the other to the extent possible.
- The FTC and DBJ acknowledge the confidentiality requirements of the laws under which each Agency operates and that commercially sensitive data may be supplied to them by market participants subject to confidentiality

conditions. Each organization may specify confidentiality conditions for information shared with the other.

- Where there is a legal constraint on the sharing of information, such as where the consent of a third party is required, the organization that holds the information will, where appropriate, make reasonable efforts to overcome these constraints so that the information can be shared with the other organization.
- All information provided pursuant to the MOU shall remain the property of the Agency providing such information.

## **7. Oversight and Coordination Meetings**

7.1 The FTC and DBJ acknowledge the benefits of oversight, coordination, and sharing perspectives and expertise relevant to their respective areas of responsibility.

7.2 Executives of the FTC and DBJ will meet at least every twelve months and/or where necessary to discuss pertinent issues of for example, privatization processes are undertaken as well as in policy development, as is appropriate.

7.3 Issues affecting the output of the Agencies as it relates to the purpose of this MOU will be decided upon by the Executives of both Agencies.

7.4 There will be contact between officers of the two organizations on routine matters; the FTC and DBJ will consider other opportunities to share perspectives and expertise on relevant issues.

## **8. ROLES AND RESPONSIBILITIES OF THE SIGNATORIES**

To meet the stated agreements, the Parties shall:

- Adopt reasonable measures and honesty of purpose to establish and maintain a relationship of mutual benefit based on goodwill and cooperation;
- Embrace a respectful culture of communication that facilitates open dialogue within the confines of this MOU;
- Recognize that the MOU is a “living” document and may be reviewed from time to time and consequently changed by mutual agreement. This MOU may only be altered with the written consent of both Parties.
- Recognize that the MOU is geared at fostering cooperation between the Agencies.



## **9. WARRANTIES AND LIMITATION OF LIABILITY**

Each Party warrants its capacity to enter into this MOU and to participate in the activities contemplated herein. No Party shall be held responsible for any cost or expense incurred by the other Party, except in keeping with the terms of this MOU, or any policies and procedures established between the Parties to give effect to this MOU.

## **10. LANGUAGE**

This MOU has been executed in the English Language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this MOU.

## **11. HEADINGS**

The headings in this MOU are for reference purposes only and shall not limit, alter or otherwise affect the meaning of the Clauses in this MOU.

## **12. NOTICES**

12.1 Any notice, request, or consent required or permitted to be given or made pursuant to this MOU shall be in writing. Any such notice, request or consent shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, to the registered business address of the Party to whom it is being sent, or such other addresses as may be notified by the Party from time to time in accordance with this Clause; or when sent by electronic mail or facsimile, to the correct electronic mail address or facsimile number of the Party to whom it is being sent as may be notified by that Party from time to time in accordance with this Clause.

12.2 In the case of personal delivery, notice will be deemed to have been received at the time of delivery to the registered address of the Party to whom the notice is being sent or to such other address as is notified by that Party to the sending Party.

12.3 In the case of notice being sent by registered mail, notice will be deemed to have been received three (3) days after the date of posting that notice. In the case of notice being sent by electronic mail or facsimile, notice will be deemed to have been received one working day after the date and time of the sending of the notice to the correct electronic address or correct facsimile.

### **13. AUTHORIZED REPRESENTATIVE**

Any action required or permitted to be taken, and any document required or permitted to be executed, under this MOU by either Party may be taken or executed by the official signatory to this MOU, or their authorized representative.

### **14. NO ASSIGNMENT**

Each of the Parties hereto shall not assign its rights and obligations under this MOU to any third party without the prior written consent of the other Party.

### **15. DURATION**

15.1 The terms and conditions set forth in this MOU shall become effective on the date of its signing and shall remain in force for five (5) years unless terminated in writing by either Party by giving six (6) months written notice of termination to the other Party or by mutual agreement by the Parties, after a period of three (3) years. The MOU shall be subject to review at five (5) year intervals.

15.2 Upon termination of this MOU by notice of either Party to the other, pursuant to this Clause, both parties shall, immediately upon dispatch and on receipt of such notice, cooperate and take all necessary steps to bring the services to a close in a prompt and orderly manner, and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

### **16. AMENDMENTS AND MODIFICATIONS**

16.1 This MOU sets forth the entire understanding between the Parties as to the subject matter herein, and will supersede all prior oral or written understandings.

16.3 Either Party may propose, when circumstances warrant, amendments or modifications to this MOU. Such proposal shall be submitted for negotiation as the nature of the proposal demands. Any amendments to the MOU shall be by mutual consent, executed by both Parties and attached as an Addendum to this MOU. Any activity already in progress will continue until completion as originally planned provided resources are available.

### **17. RELATIONSHIP OF THE PARTIES**

Nothing in this MOU constitutes any Party as the agent, employee or partner of the other Parties. No Party has the right or authority to bind the other Party, including without limitation the power to incur any liability or expense on behalf of the other Party without its prior written consent, except as expressly set forth in this MOU.



## **18. CONFIDENTIALITY**

18.1 In addition to the confidentiality provisions of Clause 6, no Party will comment publicly on any matter that relates directly or indirectly to policies, practices or procedures of the other Party with respect to this MOU without first advising and/or obtaining the consent of the other Party.

18.2 With the exception of information that is already available in the public domain, the Parties agree that information – to include client information and/or trade secrets – communicated to one Party in any manner in connection with this MOU shall be classified as “Confidential Information”, whether before or after the date of this MOU.

18.3 **Confidential Information** means all information that is by its nature confidential and which:

- is designated or marked by a Party as confidential;
- a Party knows or ought to know is confidential but does not include information which is or becomes public knowledge other than by breach of this MOU or any other confidentiality obligation or is otherwise required to be disclosed by law.

## **19. DISCLOSURE**

If one Party is required by law to disclose any confidential information relating to the scope of this MOU, then that Party shall immediately inform the other Party in writing and at a time reasonably sufficient for the other Party to take whatever action they consider necessary to protect their rights regarding Confidentiality.

## **20. FAIRNESS AND GOOD FAITH**

20.1 This MOU does not create any rights and obligations on the part of either Party. The Parties undertake to act in good faith under this MOU and to adopt all reasonable measures to ensure that the purpose of this MOU is met.

20.2 The Parties recognize that it is impractical in this MOU to provide for every contingency which may arise during the life of this MOU, and the Parties hereby agree that it is their intention that this MOU shall operate fairly between them, and without detriment to the interest of either of them, and that, if during the term of this MOU either Party believes that this MOU is operating unfairly, the Parties will use their best-efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness.



**21. PROCESS FOR RESOLVING CONFLICT**

Disputes shall be resolved by amicable settlement. Any differences that may arise in the application of this MOU will be addressed through consultations between the Parties.

**22. GOVERNING LAW**

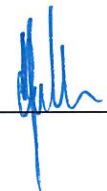
This MOU is governed by the Laws of Jamaica in respect of the interpretation of any of the Clauses herein.

**23. SIGNATURES**

To certify the acceptance of the terms of this MOU, the signature of the competent and responsible authority of each Party is affixed below.

**IN WITNESS WHEREOF** the undersigned parties, duly authorized by their respective Agencies, have signed this MOU on this *29* day of *April*, 2020.

SIGNED for and on behalf of the )  
**FAIR TRADING COMMISSION** )  
by: **DAVID MILLER, EXECUTIVE** )  
**DIRECTOR**

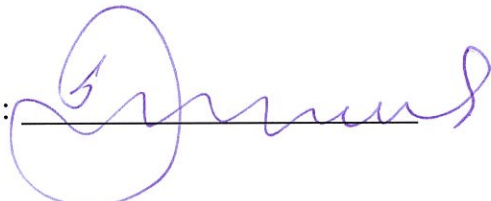
Signature: 

in the presence of:

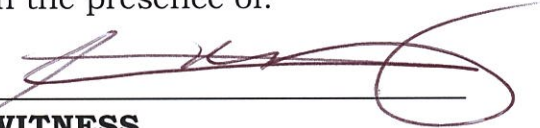
  
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**WITNESS**

SIGNED for and on behalf of )  
**DEVELOPMENT BANK** )  
**OF JAMAICA LIMITED** by: )  
**MILVERTON REYNOLDS,** )  
**MANAGING DIRECTOR** )

Signature: 

in the presence of:

  
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**WITNESS**

**SHERON A. HENRY**  
**ATTORNEY-AT-LAW**  
**#2454**