

ENFORCEABLE UNDERTAKING

KUWAIT TURKISH PARTICIPATION BANK (DUBAI) LIMITED

THIS ENFORCEABLE UNDERTAKING is made under and for the purposes described in Article 89 of the Regulatory Law.

The commitments in this Enforceable Undertaking are offered to the Dubai Financial Services Authority by **KUWAIT TURKISH PARTICIPATION BANK (DUBAI) LIMITED**.

Capitalised terms not otherwise defined in this Enforceable Undertaking have the meanings given to them in the *DFSA Rulebook, Glossary Module* or in the Annex to this Enforceable Undertaking.

1. INTRODUCTION AND BACKGROUND

1.1 Introduction

- 1.1.1 KTD has been licensed and authorised since 19 November 2009 as a Category 5 Authorised Firm (Islamic Financial Institution) to conduct a range of Shari'a compliant Financial Services activities.

1.2 Risk Assessments (2010-2013)

- 1.2.1 As part of its periodic Risk Assessment of KTD in 2010, the DFSA identified various deficiencies in the areas of risk management, AML, corporate governance, operational controls, organisational structure, compliance management, management of outsourcing arrangements and oversight from the Parent. Following this 2010 Risk Assessment, KTD implemented a risk mitigation plan which was designed to address these issues.
- 1.2.2 The DFSA periodic Risk Assessment of KTD in 2011 identified further deficiencies in corporate governance, risk management and the compliance function, which gave increased cause for concern, given the expansion of KTD's activities. A further risk mitigation plan was implemented.
- 1.2.3 The DFSA periodic Risk Assessment of KTD in 2013 reviewed *inter alia* KTD's AML systems and controls, its customer files and transaction documentation, and identified concerns about KTD's compliance with provisions of the AML Module 2013. These were discussed with KTD during the course of the Risk Assessment in January 2013, and in follow up meetings during early 2013.

1.3 Commencement of Investigation (2013)

- 1.3.1 On 23 May 2013, the DFSA commenced an investigation into KTD's AML processes, systems and controls, corporate governance and customer due diligence.

1.4 Expert Report (2014)

- 1.4.1 On 4 March 2014, the DFSA issued KTD with a notice under Article 74 of the Regulatory Law requiring KTD to appoint an external expert to provide a report in accordance with the requirements set out in that notice (the **Expert Report**).

- 1.4.2 On 2 May 2014, the Expert Report was provided to both the DFSA and KTD. The Expert Report covered the full scope of KTD's compliance framework in relation to AML (including a review of its client due diligence files), as well as its credit and balance sheet management processes.
- 1.4.3 In summary, the Expert Report identified deficiencies and areas for improvement in KTD's systems and controls regarding risk management, AML, and corporate governance, although it did not identify any specific contraventions of the laws and regulations applicable in the DIFC. These included, but are not limited to, the following:
- a. certain documents and information were missing from selected customer due diligence files of KTD;
 - b. in relation to its AML risks, KTD *"did not conduct a formal risk assessment taking into account products, customer types, segments and geographies in order to truly gauge its overall compliance/AML risk"*;
 - c. in relation to its transaction monitoring processes, KTD did not have a formal process for obtaining documents in respect of inward remittances and did not perform signatory checks in respect of outward remittances;
 - d. in relation to SARs, KTD did not have an effective escalation and investigation process;
 - e. in a review of transactions in 18 credit customer files, certain requisite information about the transactions was missing from the files such as *"information about the shipment of the goods or their place of discharge for which advance payment had been paid by [KTD]"*;
 - f. *"there was a significant misalignment between [KTD's] risk rating of its credits and [the Expert's] preliminary rating of the same credits"* and there were *"deficiencies in the overall financial analysis"* of credit customers (based on a review of 18 customer files); and
 - g. KTD could improve the effectiveness of the communication of responsibilities and training within KTD, particularly in relation to AML.
- 1.4.4 Taking into consideration the growth ambitions of KTD and the increase in complexity of transactions that would likely accompany such growth, the Expert Report provided for a suite of recommendations (the **Expert Recommendations**), which it stated were designed to *"strengthen [KTD's] AML related processes"* noting that *"as [KTD] grows and the volume and complexity of transactions handled by [KTD] rises, such enhancements in the current organisation and processes will be needed if [KTD] is to align its functions with international best practices and become a more self-sufficient and independent subsidiary with less reliance on its Parent Bank or third parties"*.

1.5 Remediation (2014-2015)

- 1.5.1 Following the Expert Report, KTD commenced a remediation process designed to implement the Expert Recommendations. Significant remedial

work has been carried out by KTD between the date of the Expert Report and the date of this Enforceable Undertaking (the **Existing Remedial Work**).

- 1.5.2 On 13 May 2014, KTD provided the DFSA with an action plan which set out the remedial steps which would be taken by KTD in respect of each of the Expert Recommendations along with the proposed dates for their completion. KTD reported progress in this regard to the DFSA throughout the remainder of 2014 and early 2015.

2. AREAS OF CONCERN

- 2.1 KTD acknowledges the DFSA's concerns set out below regarding its conduct as a DFSA licensed firm.
- 2.2 Although no specific contraventions of the laws and regulations applicable in the DIFC are cited in this Enforceable Undertaking, due to the deficiencies identified in section 1 above, the DFSA is concerned that KTD may not have:
- 2.2.1 acted with due skill, care and diligence in accordance with Principle 2 of the Principles for Authorised Firms (GEN Rule 4.2.2);
- 2.2.2 ensured that its affairs were managed effectively and responsibly and that it had in place adequate systems and controls to ensure, as far as is reasonably practical, that it complied with legislation applicable in the DIFC in accordance with Principle 3 of the Principles for Authorised Firms (GEN Rule 4.2.3); and
- 2.2.3 established and maintained systems and controls including, but not limited to, financial and risk systems and controls that ensure that its affairs are managed effectively and responsibly by its senior management (GEN Rule 5.3.1(1)).
- 2.3 The DFSA is concerned to ensure that KTD:
- 2.3.1 has systems and controls that comply with the DFSA's Laws and Rules;
- 2.3.2 implements these systems and controls effectively; and
- 2.3.3 maintains these systems and controls.
- 2.4 The DFSA acknowledges that, in undertaking the Existing Remedial Work, KTD committed significant senior management resources and attention to these concerns.
- 2.5 Furthermore, the DFSA acknowledges that KTD has cooperated fully with the DFSA since the commencement of its investigation.

3. TERMS AND CONDITIONS OF ENFORCEABLE UNDERTAKING

3.1 Appointment of External Compliance Expert

- 3.1.1 KTD further undertakes that, within 30 days from the date of this Enforceable Undertaking, it will engage a suitably qualified and experienced third party (the **External Compliance Expert**) to carry out the activities described in Clause 3.2.

- 3.1.2 The External Compliance Expert must be a person nominated or approved by the DFSA, and the terms and conditions of engagement of the External Compliance Expert must be approved by the DFSA.
- 3.1.3 KTD further undertakes that it will pay the costs and expenses relating to the engagement of and services provided by the External Compliance Expert.

3.2 Role of External Compliance Expert

Review of Existing Remedial Work

- 3.2.1 The External Compliance Expert will:
- a. carry out a review and assessment of the Existing Remedial Work;
 - b. provide certification in respect of those Expert Recommendations which have been implemented as part of the Existing Remedial Work; and
 - c. identify any gaps in the implementation of the Expert Recommendations through the Existing Remedial Work and any further deficiencies in KTD's AML policies, procedures and systems and controls.

Remediation Plan

- 3.2.2 To the extent that any further deficiencies are identified pursuant to Clause 3.2.1 above, KTD and the External Compliance Expert will prepare a remediation plan to remedy these deficiencies (the **Remediation Plan**). The Remediation Plan is subject to approval by the DFSA but must as a minimum set out the:
- a. deficiencies to be remediated;
 - b. tasks to be completed to remediate the deficiencies;
 - c. person/s responsible for completing each of the tasks; and
 - d. timeframe to complete each of the tasks.
- 3.2.3 KTD undertakes to ensure that the Remediation Plan is approved by the DFSA and for that purpose to:
- a. submit the draft Remediation Plan to the DFSA for approval no later than 30 days after the date of the appointment of the External Compliance Expert;
 - b. make any changes to the draft Remediation Plan that may be required by the DFSA in order for it to approve the plan; and
 - c. resubmit the draft Remediation Plan for approval with the changes requested under Clause 3.2.3b no later than 14 days after the DFSA has requested the changes.

Implementation of the Remediation Plan

- 3.2.4 KTD undertakes to implement all of the tasks in the Remediation Plan and to do so within the timetable in the Remediation Plan and, in any event, to

complete all of the tasks no later than 3 months from the date of appointment of the External Compliance Expert.

Monitoring

- 3.2.5 The External Compliance Expert will monitor the implementation of the Remediation Plan to ensure that the changes have been properly implemented and are operating effectively in practice and report to the DFSA on a monthly basis in this regard from the date of its appointment.
- 3.2.6 The External Compliance Expert will provide the DFSA with an assessment and written confirmation at the end of the period of 3 months following its engagement as to whether KTD has properly implemented measures to fulfill the requirements of the Remediation Plan.

Supervision by the External Compliance Expert of the Client Onboarding Process within KTD

- 3.2.7 For a period of at least 3 months following the date of its engagement and until such time as the External Compliance Expert has provided the written assessment and confirmation under Clause 3.2.6 and which is accepted by the DFSA, the External Compliance Expert will supervise the onboarding of any new Clients of KTD to ensure that such onboarding is in compliance with the provisions of the *DFSA Rulebook, Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module* and other relevant DFSA Laws and Rules. The External Compliance Expert will also provide certification to KTD in respect of this compliance.
- 3.2.8 Subject to Clause 3.5.1 below, KTD undertakes that it will not provide any Financial Services for any Person who is not a Client of KTD at the date of this Enforceable Undertaking without obtaining from the External Compliance Expert the certification contemplated by Clause 3.2.7 above.

3.3 Training and Non-Executive Director Appointment

3.3.1 KTD further undertakes to ensure that:

- a. within 3 months of the date of this Enforceable Undertaking, every member of staff and the Board of Directors of KTD has received effective training regarding KTD's obligations under DFSA Laws and Rules, with particular focus on KTD's risk management and AML obligations; and
- b. within 3 months of this Enforceable Undertaking, one or more persons, who are not connected to the Parent or any shareholder of the Parent or KTD, are proposed to the DFSA in good faith by KTD to be appointed to the Board of Directors of KTD.

3.4 Financial Penalty

- 3.4.1 KTD further undertakes to pay to the DFSA a financial penalty in relation to the concerns set out in this Enforceable Undertaking. The penalty payable is a total of USD150,000 as follows:

- a. the amount of USD50,000 is payable within 30 days of the date of this Enforceable Undertaking; and
 - b. subject to Clauses 3.4.2 and 3.4.3, the amount of USD100,000 is suspended indefinitely.
- 3.4.2 If the DFSA, in its sole discretion, reasonably determines that KTD has failed in any material respect to comply with any or all of the terms or conditions in this Enforceable Undertaking, it must notify KTD in writing of that determination. In such instance, the penalty in Clause 3.4.1b shall cease to be suspended.
- 3.4.3 In the event that the financial penalty under Clause 3.4.1b ceases to be suspended and becomes payable under Clause 3.4.2, KTD undertakes to pay the financial penalty of USD100,000 within 30 days of being provided with the DFSA's written determination in accordance with Clause 3.4.2.

3.5 Further Undertakings

- 3.5.1 Until such time as the External Compliance Expert gives its assessment and written confirmation in accordance with Clause 3.2.6 above and which is accepted by the DFSA, KTD agrees that it will not carry on the activity of:
- a. managing a PSIA on the unrestricted basis; or
 - b. providing Credit, or Arranging Credit or Deals in Investments in relation to a Credit Facility, with any Person, unless, as of the date of this Enforceable Undertaking, the Person is a customer of KTD, and KTD is carrying on the activity:
 - i. of servicing a Credit Facility which has already been extended to a customer; or
 - ii. of extending a Credit Facility to a customer which has already been approved by KTD and recorded in writing prior to the date of this Enforceable Undertaking, or of servicing such a Credit Facility.
- 3.5.2 KTD agrees to comply with any reasonable and lawful directions given to it by the DFSA about compliance with its obligations under this Enforceable Undertaking, within a reasonable period prescribed at the sole discretion of the DFSA.
- 3.5.3 KTD undertakes not to make any public statement that in any way conflicts with the intent and purpose of this Enforceable Undertaking or that disputes the determinations reached by the DFSA as recorded in this Enforceable Undertaking.

3.6 Remedies for Breach of Enforceable Undertaking

- 3.6.1 KTD acknowledges the right of the DFSA, at its sole discretion, to reasonably determine that KTD has failed to satisfy the terms and conditions of this Enforceable Undertaking.
- 3.6.2 In the event the DFSA determines that a failure to satisfy the terms and conditions of this Enforceable Undertaking has occurred, then the DFSA

reserves the right to pursue any remedy available to it in law without further notice, including but not limited to those specified in Article 89(4) of the Regulatory Law.

3.7 Address for Service of Documents or Process

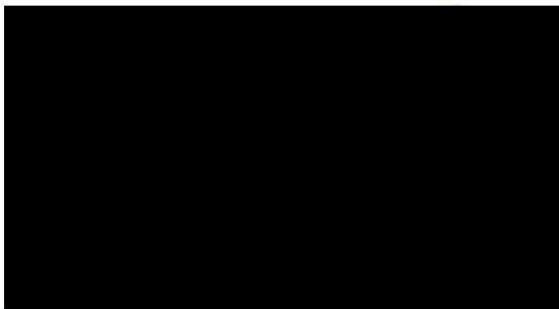
KTD agrees that its address for service of any letter, document or process in relation to this Enforceable Undertaking is:

Kuwait Turkish Participation Bank (Dubai) Limited
Office 903, Level 9,
Al Fattan Currency House 1,
PO Box 482031,
DIFC,
Dubai, UAE

3.8 Acknowledgements

- 3.8.1 The DFSA accepts the undertakings given by KTD in this Enforceable Undertaking.
- 3.8.2 This Enforceable Undertaking is drafted and agreed to as between the DFSA and KTD.
- 3.8.3 A person who is not a party to this Enforceable Undertaking has no rights under Part 10 of the *Contract Law (DIFC Law No 6 of 2004)* or otherwise to enforce any term of this Enforceable Undertaking.
- 3.8.4 Subject to Clause 3.8.5 below, the facts and matters contained in this Enforceable Undertaking are without prejudice to the DFSA and KTD in that they may not be used, produced or relied upon in any other proceedings, including without limitation any civil, administrative or criminal actions or proceedings that may be brought by any other person or agency.
- 3.8.5 Clause 3.8.4 above does not prevent the DFSA from seeking any court order in relation to this matter or bringing any action to enforce a term or condition of this Enforceable Undertaking.
- 3.8.6 This Enforceable Undertaking is governed by and shall be construed in accordance with the laws of the DIFC. The parties irrevocably agree that the DIFC Court shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with this Enforceable Undertaking.
- 3.8.7 This Enforceable Undertaking does not affect the DFSA's power to investigate or take further action against KTD in relation to any other concerns, or arising from future conduct or findings, other than the facts and concerns set out in this Enforceable Undertaking.
- 3.8.8 The DFSA may issue a media release upon execution of this Enforceable Undertaking referring to its terms and the concerns of the DFSA that led to its execution. Further, the DFSA may make this Enforceable Undertaking available for public inspection.

3.8.9 This Enforceable Undertaking takes effect on the date on which it is executed by the DFSA's authorised delegate.



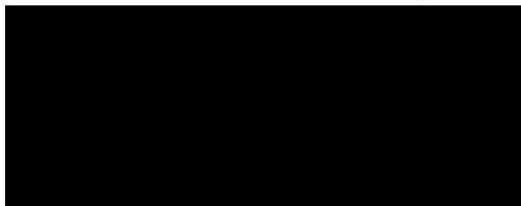
07 - June - 2015

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Date

Senior Executive Officer
Kuwait Turkish Participation Bank (Dubai) Limited
On behalf of Kuwait Turkish Participation Bank (Dubai) Limited

Accepted by the Dubai Financial Services Authority under Article 89 of the Regulatory Law 2004 by its authorised delegate:



08.06.2015

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Date

Stephen Glynn
Senior Director and Head of Enforcement
Dubai Financial Services Authority

ANNEX – DEFINITIONS

AML means anti-money laundering.

AML Module 2013 means the *DFSA Rulebook, The Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module ver9/07-13*.

COB means the *DFSA Rulebook, Conduct of Business Module*.

Date of this Enforceable Undertaking means the day on which the Enforceable Undertaking takes effect under Clause 3.8.9.

DFSA means Dubai Financial Services Authority.

Existing Remedial Work means the remedial work referred to in Clause 1.5.1.

Expert Report means the report referred to in Section 1.4.

Expert Recommendations means the recommendations referred to in Clause 1.4.4.

External Compliance Expert means expert referred to in Clause 3.1.1.

GEN means the *DFSA Rulebook, General Module*.

KTD means Kuwait Turkish Participation Bank (Dubai) Limited, a wholly owned subsidiary of the Parent.

Parent means the parent company of KTD; namely, Kuwait Turk Participation Bank Inc. incorporated in Turkey and regulated by the Turkish Banking Regulation and Supervision Agency.

Regulatory Law means the *Regulatory Law, DIFC Law No 1 of 2004*.

Remediation Plan means the plan referred to in Clause 3.2.2.

Risk Assessment means the on-site risk assessment of an Authorised Firm conducted by the DFSA.

SAR means suspicious activity report.