

ENFORCEABLE UNDERTAKING

Banking Act 1959

THIS UNDERTAKING IS GIVEN BY:

Mega International Commercial Bank Co., Ltd ARBN 79372688 (hereinafter referred to as "Mega ICBC")
of Level 6, 275-281 George Street, Sydney, New South Wales 2000

AND IS ACCEPTED BY:

Australian Prudential Regulation Authority ("APRA")
of Level 26, 400 George Street, Sydney, New South Wales 2000

UNDER SECTION 18A OF THE BANKING ACT 1959.

A. BACKGROUND

APRA's role

1. APRA has the functions and powers set out in the *Australian Prudential Regulation Authority Act 1998* (Cth) and the *Banking Act 1959* (Cth) (the *Banking Act*).
2. Pursuant to s11B of the *Banking Act*, APRA is responsible for encouraging and promoting the carrying out by authorised deposit taking institutions (ADIs) of sound practices in relation to prudential matters. It is also responsible for the evaluation of the effectiveness and carrying out of those practices.
3. Pursuant to section 11AF of the *Banking Act*, APRA may make standards in relation to prudential matters that must be complied with by all ADIs (Prudential Standards). The Prudential Standards set out the minimum prudential requirements to be observed by an ADI.

Authority

4. Mega ICBC is authorised under section 9 of the *Banking Act* to carry on banking business in Australia and is an ADI.
5. As an ADI, Mega ICBC must comply with the *Banking Act* and the Prudential Standards.
6. Mega ICBC must also comply with other statutory and regulatory requirements. In particular, Mega ICBC is a cash dealer for the purposes of the *Financial Transaction Reports Act 1988* (FTRA) and a reporting entity for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument (No.1)* made under s.229 of the AML/CTF Act.

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Independent Expert's Reports

7. In December 2008 APRA requested Mega ICBC to conduct a review pursuant to Prudential Standard APS 310 *Audit & Related Matters*, to gather information for APRA to determine whether Mega ICBC conducted its affairs with integrity, prudence and professional skill.
8. Mega ICBC engaged an independent expert (the Independent Expert) to undertake the review of Mega ICBC's risk management framework, policies and procedures relating to deposit-taking, along with its compliance with the Authority and its reporting requirements under the FTRA.
9. On 12 May and 6 July 2009 the Independent Expert provided reports relating to its review (the Independent Expert's Reports).
10. The Independent Expert's Reports into the affairs of Mega ICBC observed, amongst other things, that:
 - (a) Mega ICBC possessed a generally poor control infrastructure, inadequate policies, an ineffective transaction monitoring system and insufficiently trained employees;
 - (b) there were inconsistencies and limitations within the transaction data and information systems maintained by Mega ICBC;
 - (c) potential breaches of Mega ICBC's Authority in relation to account opening appeared to have occurred;
 - (d) there had been a significant and systemic level of potentially unusual and suspicious transactions within Mega ICBC, the majority of which had not been identified by Mega ICBC as unusual or subject to further enquiry; and
 - (e) Mega ICBC had failed to comply with its regulatory requirement to report to the Australian Transaction Reports and Analysis Centre (AUSTRAC) all suspicious transactions and all significant cash transactions.

B. APRA'S CONCERNS

11. Based on the findings of the Independent Expert's Reports and other information available to APRA, APRA has concerns that:
 - (a) Mega ICBC's risk management systems were inadequate, ineffective and did not adequately operate having regard to the risks they were designed to control;
 - (b) Mega ICBC's risk management systems failed to meet the requirements of Prudential Standard APS 310 *Audit & Related Matters*;
 - (c) Mega ICBC failed to adequately oversee and supervise the Australian branch operation;
 - (d) the Senior Officer Outside Australia of Mega ICBC failed to adequately oversee and supervise the Australian branch operation as required by Prudential Standard APS 510 *Governance*;

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- (e) the Senior Manager in Australia and the Senior Officer Outside Australia provided declarations to APRA required by Prudential Standard APS 310 *Audit & Related Matters*, without having sufficiently identified the key risks of Mega ICBC or sufficiently ensured that appropriate systems to monitor and manage those risks were operating effectively and were adequate;
- (f) Mega ICBC's internal audit, as required by Prudential Standard APS 310 *Audit & Related Matters*, was insufficient and ineffective in ensuring compliance by Mega ICBC with APRA's prudential requirements;
- (g) Mega ICBC failed to maintain adequate records (including transaction data) to enable it to meet and/or verify its compliance with the conditions of the Authority and its statutory requirements;
- (h) Mega ICBC failed to implement an effective transaction monitoring system to enable it to comply with its reporting requirements under the FTRA and the AML/CTF Act and, as a result, also failed to adequately comply with its reporting requirements under the FTRA, in particular in relation to the reporting of suspicious transactions and significant cash transactions;
- (i) at least some of Mega ICBC's staff were involved in or had knowledge of the opening and operation of accounts in a manner contrary to Mega ICBC's own policies and procedures; and
- (j) at least some of Mega ICBC's staff were involved in, had knowledge of, facilitated or participated in structured transactions by some Mega ICBC customers.

C. ACKNOWLEDGMENTS

12. Mega ICBC acknowledges that APRA has the concerns detailed in paragraph 11 and admits that its conduct fell seriously short of acceptable banking practice. Mega ICBC regrets without reservation the circumstances which led to the commissioning of the Independent Expert's Reports and the need for this Enforceable Undertaking.

D. UNDERTAKINGS

Compliance with Prudential Standards

13. Mega ICBC will comply with all Prudential Standards that apply to Mega ICBC.

Account opening

14. After 7 days from the date of this Enforceable Undertaking (the **Cessation Date**) until otherwise agreed by APRA in writing, Mega ICBC will not open any new Deposit Account other than:
 - (a) rolling over a term deposit, certificate of deposit (including rolling over or replacement issue of electronic certificates of deposit) or other time deposit that is in existence immediately prior to the Cessation Date; or
 - (b) opening a Deposit Account in the same name as an existing account holder(s) for the purpose of receiving into that account any amount

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from a term deposit, certificate of deposit or other time deposit that is in existence immediately prior to the Cessation Date; or

- (c) opening a Deposit Account for moneys being collateral or security in relation to any loan facility; or
- (d) opening a Deposit Account in relation to receiving or paying principal, interest, sales proceeds or other moneys directly related to any loan facility.

Within 14 days of any request made by APRA in writing, Mega ICBC will provide to APRA:

- (i) a list of all Deposit Accounts opened during any period after the Cessation Date specified by APRA;
- (ii) a description of the reason(s) or circumstance(s) why each Deposit Account was opened including how the opening of each new account is in accordance with the requirements of sub-paragraph s14(a) to (d) and Mega ICBC's policies, procedures and Authority; and
- (iii) any other information specified by APRA in relation to those accounts.

APRA may direct Mega ICBC to close or suspend the operation of any Deposit Account opened after the Cessation Date.

- 15. Mega ICBC confirms that prior to the date of this Enforceable Undertaking it has already stopped accepting new Deposit Accounts from non-residents.

Review of deposit accounts

- 16. Within 30 days of the date of this Enforceable Undertaking Mega ICBC will provide to APRA a list of all Deposit Accounts that are open at the Cessation Date including the account number, account name, the customer identification number and any other information that Mega ICBC considers would assist APRA in identifying the account.
- 17. Mega ICBC will conduct a review of all accounts described in paragraph 16, with particular attention to accounts:
 - (a) opened with an initial deposit of less than \$250,000; or
 - (b) opened by non-residents; or
 - (c) with more than one signatory;
 or as otherwise directed by APRA in writing.
- 18. Upon completion of the review described in paragraph 17, Mega ICBC will prepare a report (the **Accounts Review Report**) that will generally describe the findings of the review including whether:
 - (a) all accounts have been opened and are being operated in accordance with Mega ICBC's Authority, statutory requirements and Mega ICBC's procedures, policies and guidelines;

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- (b) any account that was opened with an initial deposit of less than \$250,000 has not been opened in accordance with condition (c) of Mega ICBC's Authority;
 - (c) any account was opened with an initial deposit of more than \$250,000 where the initial deposit into this account was transferred or otherwise provided from another Deposit Account held at Mega ICBC;
 - (d) any account that was opened by any non-resident(s) is not being operated primarily by the non-resident(s) account holder;
 - (e) any account that has more than one signatory is not being operated primarily by the account holder(s);
 - (f) having regard to the matters set out in the AUSTRAC Typologies and Case Studies Report 2009, the operation of and transactions undertaken in respect of any account gives rise to a reasonable concern that the account may have been or could be used for money laundering, the financing of terrorism or other criminal activities; and
 - (g) each account should or should not be closed and the reasons for that determination.
19. Mega ICBC understands and acknowledges that APRA expects that where Mega ICBC reaches the view that there is no commercial or otherwise legitimate reason for the existence or operation of an account, that account will be closed.
20. In respect of any accounts which are to be closed in accordance with paragraph 18(g), Mega ICBC will either:
- (a) immediately close the account and not open any new Deposit Account for the same account holder(s); or
 - (b) if, due to any circumstances the account cannot be closed immediately, determine a time frame for the closing of those accounts.
21. Mega ICBC will prepare a report (the Account Closure Plan) which details:
- (a) those accounts which have been closed and the date of closing; and
 - (b) those accounts which cannot be closed immediately due to any circumstances, the reasons as to why the account cannot be closed immediately and a timeframe for the closing of those accounts.
22. Mega ICBC will implement the Account Closure Plan within the timeframes specified therein.
23. The Accounts Review Report and the Account Closure Plan will be completed and provided to the Senior Officer Outside Australia of Mega ICBC, the President of Mega ICBC, the Board of Directors of Mega ICBC and to APRA within 90 days of the date of this Enforceable Undertaking.
24. Mega ICBC will incorporate such modifications to the Account Closure Plan as are notified in writing by APRA.

25. Mega ICBC will engage an independent expert, to be approved by APRA and on terms approved by APRA (the **Accounts Review Expert**) to review the content and findings of the Accounts Review Report and the Account Closure Plan, and prepare a report describing whether the Accounts Review Expert agrees with the content and findings of the Account Review Report and the Account Closure Plan (the **Accounts Review Expert Report**).
26. The Accounts Review Expert Report will be completed and provided to the Senior Officer Outside Australia of Mega ICBC, the President of Mega ICBC, the Board of Directors of Mega ICBC and to APRA within 120 days of the date of this Enforceable Undertaking, unless a later date is agreed with APRA.

Funding and Liquidity

27. Mega ICBC will ensure that the Australian business has sufficient liquidity to manage its business in a prudential manner and consistent with APRA's Prudential Standards (including but not limited to Prudential Standard APS 210 *Liquidity*).

Staff Review

28. Within 14 days of the date of this Enforceable Undertaking, Mega ICBC will provide APRA with a list of all its current employees in Australia and their respective job descriptions.
29. Within 45 days of the date of this Enforceable Undertaking, Mega ICBC will:
 - (a) determine, having regard to its own considerations and circumstances as well as APRA's prudential requirements, whether it is appropriate to remove and replace (or otherwise change) its senior management in Australia (in addition to the positions referred to in paragraph 30);
 - (b) determine a timetable for taking any action under subparagraph 29(a);
 - (c) inform APRA in writing of the decisions made in accordance with sub-paragraphs 29(a) and 29(b);
 - (d) provide APRA with full details of the proposed replacement(s), if any, for Mega ICBC's senior management in Australia; and
 - (e) provide APRA with the criteria by which Mega ICBC judges the replacement(s), if any, to be appropriate to fill the senior management positions including, but not limited to, an assessment as to whether the proposed replacements are fit and proper to hold the proposed position in accordance with Prudential Standard APS 520 *Fit and Proper*.
30. Mega ICBC confirms that it has already replaced the Vice President and General Manager for Australia and the Vice President and General Manager of its Brisbane branch prior to the date of this Enforceable Undertaking.
31. Mega ICBC will also conduct a review in relation to the conduct of every other employee in Australia to determine whether they may have been responsible

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for or involved in any improper conduct in connection with Mega ICBC's affairs, including but not limited to any matters arising out of:

- (a) the Independent Expert's Reports;
 - (b) the Accounts Review Report;
 - (c) the Accounts Review Expert Report;
32. Upon completion of the review described at paragraph 31, Mega ICBC will prepare a report (the **Staff Review Report**) detailing:
- (a) how the review described in paragraph 31 was conducted;
 - (b) the outcome of the review described in paragraph 31; and
 - (c) any action taken or to be taken by Mega ICBC as a result of the review described in paragraph 31.
33. The Staff Review Report will be completed and provided to the Senior Officer Outside Australia of Mega ICBC, the President of Mega ICBC, the Board of Directors of Mega ICBC and to APRA within 130 days of the date of this Enforceable Undertaking, unless a later date is agreed by APRA.

Senior Officer Outside Australia

34. Mega ICBC will conduct a review of the role of Senior Officer Outside Australia to determine if that role has been carried out appropriately having regard to APRA's Prudential Standards.
35. Upon completion of the review described in paragraph 34, Mega ICBC will prepare a report (the **SOOA Report**) in respect of the results of the review. The SOOA Report is to include consideration of whether any changes are required to the role of the Senior Officer Outside Australia and the manner in which that role is carried out, to ensure compliance with APRA's Prudential Standards.
36. The SOOA Report will be completed and provided to the Senior Officer Outside Australia of Mega ICBC, the President of Mega ICBC, the Board of Directors of Mega ICBC and to APRA within 30 days of the date of this Enforceable Undertaking.

Independent Expert's Recommendations

37. Mega ICBC will:
- (a) take immediate steps to implement recommendations made in the Independent Expert's Reports (the **Independent Expert Recommendations**); and
 - (b) by 1 December 2009 engage an independent expert, as approved by APRA and on terms approved by APRA, to:

- (i) review and assess Mega ICBC's progress in implementing the Independent Expert Recommendations; and
- (ii) provide to APRA a written report (in a form approved by APRA) every 3 months from the date that the independent expert described in paragraph 37(b) above was engaged for a period of 2 years, or at such frequency and for such time period otherwise advised by APRA in writing, on Mega ICBC's implementation of the Independent Expert Recommendations.

Internal Audit Plan

- 38. Mega ICBC confirms that it has appointed an external party to conduct internal audit review for its Australian business and Mega ICBC will ensure that this external party, or another external party, will be retained for a period of at least 3 years from the date of this Enforceable Undertaking or such other period as advised by APRA in writing.
- 39. Within 60 days of the date of this Enforceable Undertaking or at any other time directed by APRA in writing, Mega ICBC will provide to APRA a written plan (the **Internal Audit Plan**) describing the scope and planned completion date of internal audit reviews to be undertaken for the Australian business over a period of at least 12 months (or such other period required by APRA). Mega ICBC will incorporate any modifications to the Internal Audit Plan required by APRA.

Risk and Compliance Manager

- 40. Within 120 days of the date of this Enforceable Undertaking or by such later date approved by APRA in writing Mega ICBC will:
 - (a) establish a position of Risk and Compliance Manager and prepare a job description for that role to be agreed with APRA;
 - (b) employ a person (the **Risk and Compliance Manager**) who:
 - (i) is able to demonstrate knowledge of, and experience in managing, risk management and compliance functions for ADIs;
 - (ii) has been for the immediate past 5 years a resident of Australia; and
 - (c) provide to APRA full details of the Risk and Compliance Manager and an assessment as to whether the person meets the requirements of Prudential Standard APS 520 *Fit and Proper*.

Australian subsidiary

- 41. Mega ICBC acknowledges that APRA may determine at its sole discretion that Mega ICBC has not complied with this Enforceable Undertaking. In the event that APRA determines that Mega ICBC has not complied with this Enforceable Undertaking, APRA may elect to notify Mega ICBC in writing that APRA requires Mega ICBC to establish a subsidiary in Australia, provided that APRA will not make such a requirement prior to 31 December 2009.

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42. In the event that APRA requires Mega ICBC to establish a subsidiary in Australia, Mega ICBC agrees:
- (a) to establish a wholly-owned subsidiary company in Australia (the Australian subsidiary) and cause the Australian subsidiary to apply to APRA within 90 days from the date of notification by APRA pursuant to paragraph 41, or such other date as agreed by APRA in writing, for authority to carry on banking business in Australia under section 9 of the Banking Act (section 9 authority).
 - (b) if APRA grants the Australian subsidiary a section 9 authority, to transfer its current business from its existing branches in Australia to the Australian subsidiary and, upon completion of the transfer, Mega ICBC will:
 - (i) cease to carry on banking business in Australia as a branch; and
 - (ii) within 90 days of the grant will request APRA, under subsection 9A(1) of the Banking Act, to revoke Mega ICBC's section 9 authority.
43. Mega ICBC acknowledges that the section 9 authority, if granted to the Australian subsidiary, may be granted subject to any conditions as APRA sees fit including, but not limited to:
- (a) restrictions on deposit taking;
 - (b) appointing persons who are normally resident in Australia as the non-executive directors of the Australian subsidiary; and
 - (c) not appointing any directors to the Australian Subsidiary without APRA's prior written approval.

E. FURTHER ACKNOWLEDGEMENTS

44. Mega ICBC acknowledges that:
- (a) it has agreed to give an Enforceable Undertaking to APRA on the terms contained herein;
 - (b) this Enforceable Undertaking is pursuant to section 18A of the Act;
 - (c) it has obtained legal advice before executing this Enforceable Undertaking;
 - (d) APRA has the power, under subsection 18A(1) of the Act, to accept a written undertaking from Mega ICBC; and
 - (e) this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Enforceable Undertaking or arising from any future conduct. In particular Mega ICBC acknowledges that nothing in this Enforceable Undertaking replaces or varies the undertakings

given in the Enforceable Undertaking provided to the Chief Executive Officer of AUSTRAC dated 29 June 2009;

- (f) APRA's acceptance of this Enforceable Undertaking does not affect APRA's power to take action arising from conduct specified in this Enforceable Undertaking in the circumstances set out in paragraph 48, or any conduct not specified in this Enforceable Undertaking or any future conduct.
45. Further, Mega ICBC acknowledges that without limiting the right of APRA to take any action pursuant to subsection 18A(3) of the Act, APRA may subject to the law:
- (a) issue a media release concerning this Enforceable Undertaking referring to its terms;
 - (b) from time to time publicly refer to this Enforceable Undertaking while this Enforceable Undertaking remains in force; and
 - (c) make this Enforceable Undertaking available for public inspection.
46. Mega ICBC acknowledges that upon any breach of this Enforceable Undertaking APRA may enforce this Enforceable Undertaking in any manner that is not contrary to the Act.
47. This Enforceable Undertaking will take effect on the date on which it is signed by APRA by way of acceptance of the Enforceable Undertaking from Mega ICBC pursuant to section 18A of the Act.

F. APRA's POSITION

48. APRA has considered a range of possible regulatory actions in relation to the concerns set out in paragraph 11. APRA notes that Mega ICBC has assisted and cooperated with APRA at all times during its investigation. Consequently APRA has agreed to enter into this Enforceable Undertaking instead of pursuing other possible regulatory actions that may be available in the circumstances. However, APRA reserves its right to pursue other regulatory responses relating to the conduct set out in this Enforceable Undertaking (in addition to enforcement action available under s18A of the Banking Act) in the event that Mega ICBC breaches any provision of this Enforceable Undertaking.

G. DEFINITIONS

'Authority' means the authority to carry on banking business in Australia granted to the International Commercial Bank of China (which changed its name to Mega ICBC on 20 September 2006) dated 5 February 1997.

'Deposit Account' means any account into which money may be deposited.

DATED the 20TH day of AUGUST ,2009.

SIGNED by

Mega International Commercial Bank Co., Ltd
in accordance with its constitution:

By K.S. Shiu

Name Kuang-Si Shiu

Title President

By Meei-Yeh Wei

Name Meei-Yeh Wei

Title Senior Executive Vice President

Signed by way of acceptance under subsection 18A(1) of the Act for the Australian Prudential Regulation Authority on 24th day of August 2009 by:

 Wayne Byres

WAYNE BYRES
EXECUTIVE GENERAL
MANAGER

in the presence of:

 Denise Errol Williamson

Witness
Print name and position of witness.

 DENISE ERROL WILLIAMSON
GENERAL MANAGER.