

**Memorandum of Understanding**  
concerning co-operation in supervision and resolution of Authorised Institutions

**between**

**The Australian Prudential Regulation Authority (APRA)**

**and**

**Banco Central do Brasil (BCB)**

**(together, "the Authorities")**

**Background**

1. This Memorandum of Understanding (MOU) sets out a framework for co-operation between the Authorities in areas of common interest where co-operation is essential for the effective and efficient performance of their respective functions of supervision and resolution of Authorised Institutions.
2. This MOU is a statement of intent and does not create any legally binding obligations on the Authorities. Additionally, this MOU is not an international agreement within the meaning of Brazilian or Australian legislation and does not derogate from any provision of national, international or supranational legislation in force in Brazil or in Australia. Therefore, neither Authority shall bear any liability regarding their eventual failure to comply with this MOU.
3. This MOU does not affect the ability of the Authorities to otherwise request:
  - a) documents, information or assistance from each other; or
  - b) documents, information or evidence from individuals under relevant laws in their respective jurisdictions, such as, in Australia, section 6 of the Mutual Assistance in Business Regulation Act 1992, and in Brazil, Law 4.595, of 1964.
4. For the purpose of this MOU:

**Authorised Institution(s)** in Australia, means an institution that is licensed or authorised by APRA to carry on authorised business under the legislation that APRA administers, and in Brazil, means an institution authorised or supervised by the BCB, under applicable Laws and Regulations, such as: Article 10, subsections IX and X of the Banking Law (Law 4,495, of 1964), Article 9, subsection V, of the Law 12,865, of 2013, amongst others.

**Cross-border Establishment** means a branch, subsidiary, representative office or any other financial entity or group within one jurisdiction which falls under the consolidated or group-wide supervision (or prospective supervision) responsibility of the other jurisdiction, including where the Authorities are both Host-country Authorities.

**Host-country Authority** means the Authority which supervises a Cross-border Establishment.

**Home-country Authority** means the Authority which supervises the Authorised Institution.

**On-Site Inspection(s)** means the official visits carried out on-site at a Cross-border Establishment by the Home-country Authority or by the Host-country Authority, as appropriate, through duly authorised officers.

## **The Authorities**

5. APRA is the national prudential regulator in Australia, established on 1 July 1998 under the Australian Prudential Regulation Authority Act 1998. APRA administers legislation providing for the supervision of authorised deposit-taking institutions (banks, building societies and credit unions), insurance/reinsurance companies, friendly societies and superannuation funds authorised to operate in Australia.
6. BCB is entrusted with the regulation, supervision and resolution of financial entities and payment institutions in Brazil pursuant to Articles 9 and 10, IX, of Law 4,595, of 1964 (the Banking Law), Article 1 of Law 6,024, of 1974, and Article 1 of Decree-Law 2,321, of 1987 (Laws of Resolution), and Articles 9, 10 and 15 of Law 12,865, of 2013. The BCB is a special nature agency characterised by the absence of ties or hierarchical subordination to any Ministry, by its technical, operational, administrative, and financial autonomy provided by Complementary Law 179, of 2021. The BCB also acts as an executive arm of the National Monetary Council,

which is the Brazilian government body responsible for the definition of the main policies and rules for the Brazilian financial system.

### **General Principles**

7. The Authorities expect, within the framework of this MOU, to provide each other with all reasonable assistance to promote the safe and sound functioning of entities regulated by the Authorities, subject to domestic laws and the Authorities' overall policies.
8. Under this MOU, the Authorities intend to cooperate and share information about the supervision and resolution of Cross-border Establishments and Authorised Institutions on areas including, but not limited to: licensing, resolution, measures for the management of crisis/emergency situations, financial crimes, as well as matters involving operational resilience, cyber security, and third-party service providers for the financial sector.
9. The Authorities expect that requests for assistance or information will be made in writing. However, where the Authorities perceive a need for expedited action, the Authorities may make a request for information in any form, but should subsequently confirm the request in writing, within 10 business days. The Authorities will endeavour to provide information to each other as quickly as possible. Requests for assistance or information will be addressed to the Authorities' contact officers named in Annexure A.
10. The Authorities recognise that the provision of information may be denied on the grounds of public interest, national security or when disclosure would interfere with an ongoing investigation. Where a request for information is denied, the Authority that made the request expects that it will be provided with the reasons for not providing the information. Each Authority may impose conditions on the use of information provided to the other Authority.
11. The Authorities expect each other to mark all documents provided under this MOU, "Confidential – Provided under Memorandum of Understanding between APRA and BCB".

### **Confidentiality**

12. The Authorities understand that they will use their best endeavours to preserve the confidentiality of the information received under this MOU, or obtained through an On-Site



Inspection. In this regard, the Authorities will hold confidential all information obtained in the course of their duties. Any confidential information received from either of the Authorities is to be used exclusively for lawful supervisory and resolution purposes. An Authority may disclose information received from the other Authority under this MOU to a third-party in the following circumstances:

- a) Where the Authority is legally compelled to do so, for example to a Court, a Royal Commission or a Parliamentary Committee of Inquiry, according to the legislation of each country;
  - b) Where the Authority receives a legally enforceable demand, for example under Freedom of Information laws, according to the legislation of each country; and,
  - c) In other circumstances permitted by law.
13. When an Authority is legally compelled to disclose information provided under this MOU to a third-party, the Authority which is under compulsion is expected to promptly notify the other Authority, indicating what information it is compelled to disclose and the circumstances surrounding its release. The Authorities expect each other to use their best endeavours to preserve the confidentiality of the information, to the extent permitted by law, if requested to do so.
14. Where an Authority wishes to disclose information received under this MOU to a third-party, but is not compelled to do so, this Authority is expected to notify the other Authority to obtain its consent. It will not disclose the information if consent is refused. Where consent is obtained, the Authority disclosing the information will impose on the third-party any conditions which have been made by the other Authority concerning the use of that information. In any event, as far as possible, the Authority disclosing the information will impose a condition on the third-party that it will keep the information confidential, and that it will not further disclose the information without first obtaining consent.

#### **Cross-border Establishments**

15. Upon request by the Host-country Authority, the Home-country Authority is expected to inform the Host-country Authority whether the applicant Authorised Institution is in compliance with

the laws and regulations administered by the Home-country Authority and whether the Authorised Institution may be expected to manage the Cross-border Establishment in an orderly manner, given the Home-country Authority's knowledge of the entity's administrative structure and internal controls. The Home-country Authority is also expected, upon request, to assist the Host-country Authority by verifying or supplementing any information submitted by the applicant Authorised Institution.

16. Upon request, the Authorities may exchange information regarding their regulatory system, the scope and development of risk-based supervision and the framework of consolidated supervision applicable to Authorised Institutions and to Cross-border Establishments, in accordance with the legislation of each jurisdiction.
17. To the extent permitted by law, and upon request, the Authorities expect to share available information on the fitness and propriety of prospective directors, managers and relevant shareholders of a Cross-border Establishment.
18. The Home-country Authority does not expect that it will be prevented from conducting On-Site Inspections of Cross-border Establishments.
19. Before deciding whether an On-Site Inspection is necessary, the Home-country Authority may request and review any relevant examination or other supervisory reports prepared by the Host-country Authority.
20. The Home-country Authority is expected to notify the Host-country Authority at least 30 (thirty) days in advance of plans to inspect or examine a Cross-border Establishment, or to appoint a third-party to conduct an examination on its behalf, and to indicate the purposes and scope of the Inspection or examination. The Host-country Authority reserves the right to accompany the Home-country Authority on such an Inspection or attend any examination. The Authorities expect to keep each other informed on the results of any Inspections in a timely manner. If the Authorised Institution has been inspected along with its Cross-border Establishment in the other country, the Home-country Authority is expected to provide the Host-country Authority with a summary report on material findings that are relevant to the Cross-border Establishment.



## **Ongoing Supervision**

21. The Authorities intend to provide relevant information to each other with regard to their involvement in financial supervision, in a timely and reasonable manner. The Authorities expect to inform each other of material administrative penalties imposed, or other formal enforcement action taken against the Cross-border Establishment or the Authorised Institution, as well as against their respective management and shareholders ( in cases of systemic impact). The Authorities expect that they will give prior notification of such action to each other, as far as it is practicable and subject to applicable laws.
22. The Authorities intend to co-operate closely when either Authority identifies suspicious matters that may relate to financial crime activities in supervised entities and transactions. Financial crimes include: money laundering; terrorism financing; the proliferation financing of weapons of mass destruction; unauthorised banking and investment business; and all other breaches of the laws governing financial institutions that are regulated by either Authority.

## **Regulatory Policy Development**

23. The Authorities expect to respond to each other's requests for information on their respective national regulatory systems and inform each other about major changes, including those that have a significant bearing on the activities of Cross-border Establishments.

## **General**

24. The Authorities expect to conduct meetings as often as appropriate to discuss issues concerning Authorised Institutions, or groups that maintain Cross-border Establishments and to review the effectiveness of cooperation arrangements. The Authorities also intend, where practical, to promote their co-operation by visits for information purposes.
25. Each Authority expects to bear its own expenses incurred in the implementation of this MOU. If it appears that an Authority is likely to incur substantial costs in responding to a particular request for information, the Authority may approach the other Authority with a view to negotiating a cost-sharing arrangement in relation to the provision of that information.

26. The Authorities shall deploy their best efforts in the performance of this MoU. Any disagreement arising from interpretation of this instrument shall be amicably settled by means of consultations between the Authorities. Both Authorities shall endeavour to create proper opportunities for such consultations.
27. The Authorities may publish or disclose this MoU in its entirety, in accordance with their respective national laws.
28. This MoU will remain in force from the date of signing unless terminated by either Authority on 30 days written notice.
29. This MoU is written in the English language in two copies.

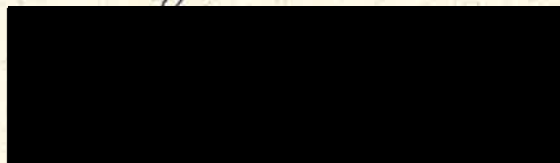
On behalf of:

The Australian Prudential Regulation Authority

By Wayne Byres

Chairman

Dated November 15<sup>th</sup> 2021



Banco Central do Brasil

By Paulo Sérgio Neves de Souza

Deputy Governor

Dated: November 22<sup>nd</sup> 2021

