

# **Memorandum of Understanding**

## **Between the China Banking Regulatory Commission and the Australian Prudential Regulation Authority**

In view of the fact that banking entities or groups incorporated in Australia have commercial interests in China and may in the future have operations there, and that banking entities or groups incorporated in China have operations in Australia, the China Banking Regulatory Commission (the CBRC) and the Australian Prudential Regulation Authority (APRA) (the Authorities) have reached the following understanding for the sharing of supervisory information to facilitate the performance of their respective duties.

**Banking entity or group** means authorised (or prospectively authorised) institutions/groups/affiliates (or parts thereof), whose activities include banking business and with operations supervised (or prospectively supervised) by either Authority.

### **Sharing of information**

1. The CBRC will endeavour to notify APRA and provide relevant information it may have regarding a material supervisory concern or that may assist APRA in the performance of its functions or to improve its efficiency, in respect of:
  - (a) an Australian banking entity or group or a Chinese branch, agency, representative office (collectively Chinese branch) or subsidiary of an Australian banking entity or group;
  - (b) an Australian branch, representative office or subsidiary of a Chinese banking entity or group; and
  - (c) banking entities where both the CBRC and APRA are host Authorities.
2. APRA will endeavor to notify the CBRC and provide relevant information it may have regarding a material supervisory concern or that may assist the CBRC in the performance of its functions or to improve its efficiency, in respect of:
  - (a) a Chinese banking entity or group or an Australian branch, agency, representative office (collectively Australian branch) or subsidiary of a Chinese banking entity or group;
  - (b) a Chinese branch or subsidiary of an Australian banking entity or group; and
  - (c) banking entities where the CBRC and APRA are both host Authorities.
3. The term 'material supervisory concern' encompasses a matter relating to:
  - (a) whether the operations of a banking entity or group are conducted in a safe and sound manner and substantially in conformity with applicable prudential standards;

- (b) whether there has been evidence of a violation of law of such a nature as potentially to affect to a material extent the operations of a banking organisation; or
  - (c) any activity, action, course of conduct or other event that could have a material adverse effect on the financial stability of any financial institution(s) in the jurisdiction of the other Authority. A material supervisory concern as described herein would include concerns that arise from actions of affiliates or associates of a banking entity or group.
- 4. Where the CBRC or APRA plans to take remedial action to address a material supervisory concern, each Authority will endeavour to notify the Authority in the other jurisdiction prior to it taking the appropriate action or, as circumstances dictate, as soon thereafter as practicable.
  - 5. In carrying out any of the undertakings of paragraphs 1, 2 and 4 above, in the case of a Chinese or Australian banking entity or group facing serious financial difficulties that could have a material adverse impact on the operations of such banking entity or group in the respective host jurisdiction, the CBRC and APRA recognise that close liaison between home and host Authority would be mutually advantageous.

The CBRC and APRA will endeavour to communicate, to the extent permitted by law, such information as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts by the home country Authority to resolve the bank's difficulties and restore confidence in the bank.

- 6. In addition to the procedures outlined in paragraphs 1-5 above, upon written request to the CBRC signed by an authorised official of APRA, the CBRC may, to the extent permitted by law, provide to APRA information contained in reports concerning Chinese branches or subsidiaries of Australian banking entities or groups, and any other confidential information regarding an Australian banking entity or group or any of its Chinese branches and subsidiaries in China that is obtained as part of the supervisory process. Such information would not normally include customer account information.
- 7. In addition to the procedures outlined in paragraphs 1-5 above, upon written request to APRA signed by an authorised official of the CBRC, APRA may, to the extent permitted by law, provide to the CBRC information contained in reports concerning Australian branches or subsidiaries of Chinese banking entities or groups, and any other confidential information regarding a Chinese banking entity or group or any of its Australian branches and subsidiaries in Australia that is obtained as part of the supervisory process. Such information would not normally include customer account information.
- 8. When the Authorities perceive a need for expedited action, requests for information under paragraphs 6 and 7 may be initiated in any form, including orally, but should be confirmed subsequently in writing within ten business days. The recipient of such a request will endeavour to respond in a timely manner.
- 9. Each Authority intends to provide to the other or to obtain, either upon request or at such times as they may mutually agree:

- (a) such information as is reasonably required by the other to facilitate a determination of whether a proposed branch or subsidiary meets or continues to meet the requirements for authorisation;
  - (b) information regarding the extent and nature of each Authority's supervision on a consolidated basis of banking entities or groups with operations in the other jurisdiction; and
  - (c) information concerning material changes in or developments with respect to each Authority's supervisory regime.
10. The provision of, or request for, information under this Memorandum may be denied:
- (a) where compliance would require the CBRC or APRA to act in a manner that would violate applicable law or any agreement entered into before the date of this Memorandum;
  - (b) on grounds of public interest or national security; or
  - (c) when compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where the prejudice to the investigation is likely to outweigh the adverse effects of denying the information.
11. In the case of an Australian or Chinese banking entity or group facing serious financial difficulties that could have a material adverse impact on the foreign operations of such banking entity or group, and subject to final agreement at the time, APRA and the CBRC expect that the home country Authority would coordinate the dissemination to other host Authorities of whatever information the home Authority judges appropriate, subject to the provisions of paragraphs 16-22 below.

## **Periodic meetings and ongoing contacts**

12. Representatives of APRA and the CBRC will endeavour to meet on an as needs basis to discuss general supervisory developments, as well as issues concerning banking entities or groups which maintain operations in both China and Australia. In addition, the CBRC and APRA may promote their cooperation through visits to the other's jurisdiction for informational purposes and by participation in each other's training programs. Every effort will be made to encourage continuous and informal contacts between staff at APRA and the CBRC.

## **Examinations**

13. The CBRC will notify APRA prior to examining any Australian branch or subsidiary of a Chinese banking entity or group located in Australia and APRA will notify the CBRC prior to examining any Chinese branch or subsidiary of an Australian banking entity or group in China. The Authority in the jurisdiction where such examinations are to take place may inform the examining Authority of any subject matter in which it has a particular concern or interest.

14. APRA may request, on an exceptional basis, the CBRC to conduct an examination of the Chinese branch or banking subsidiary of an Australian banking entity or group; and the CBRC may request, on an exceptional basis, APRA to conduct an examination of the Australian branch or banking subsidiary of a Chinese banking entity or group. The Authorities acknowledge that such an examination can only be commenced in accordance with their respective domestic laws and overall policies. APRA and the CBRC, as the case may be, will endeavour to establish the basis and terms upon which such examinations are to be conducted.
15. The host Authority may accompany the home Authority during an examination of a branch or banking subsidiary in the host jurisdiction, subject to consideration and agreement by the relevant Authority on a case-by-case basis.

### **Confidentiality and use of information**

16. Any confidential information shared pursuant to this Memorandum is to be used only for lawful supervisory purposes.
17. To the extent permitted by law, APRA shall treat as confidential all such information received from the CBRC pursuant to this Memorandum, and shall not disclose such information other than in accordance with such conditions (if any) attached by the CBRC to the provision of such information and as necessary to carry out its lawful supervisory responsibilities.
18. To the extent permitted by law, the CBRC shall treat as confidential all such information received from APRA pursuant to this Memorandum, and shall not disclose such information other than in accordance with such conditions (if any) attached by APRA to the provision of such information and as necessary to carry out its lawful supervisory responsibilities.
19. All documents provided pursuant to this Memorandum will remain the property of the Authority providing such information.
20. Subject to paragraphs 16-19 inclusive above, where an Authority is legally compelled to disclose confidential information provided pursuant to this Memorandum, that Authority will promptly notify the Authority that provided the information and will cooperate in seeking to preserve the confidentiality of the information, to the extent permitted by law.
21. Subject to paragraphs 16-20 inclusive above, where an Authority receives a request from a third party for confidential information provided pursuant to this Memorandum, that Authority will promptly notify the Authority that provided the information, will solicit the providing Authority's views as to the propriety of releasing such information to the third party and will cooperate in seeking to preserve the confidentiality of the information.
22. The sharing of confidential information pursuant to this Memorandum is done in reliance on the foregoing assurances and shall not constitute a waiver of any legally recognisable privilege as to any person other than the parties to this Memorandum.

23. The CBRC and APRA, in providing confidential written materials pursuant to this Memorandum, should mark every page of the material provided with a legend reading substantially as follows:

**‘Confidential – provided  
pursuant to CBRC/APRA  
Memorandum of Understanding’**

**General provisions**

24. By executing this Memorandum, neither party waives any immunity from suit to which it may be entitled nor submits to the jurisdiction of any court that would not have been a court of competent jurisdiction if this Memorandum had not been executed.
25. No provision of this Memorandum is intended to give rise to the right on the part of any person, entity or governmental authority, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this Memorandum.
26. This Memorandum is to continue in effect for a period of one year from the latest date entered below and will automatically be renewed each year subject to modification by the mutual consent of the CBRC and APRA. Provided, however, that the provisions set forth under the headings ‘Confidentiality and use of information’ and ‘General provisions’ are to continue with respect to any information provided or actions taken under this Memorandum prior to its termination.
27. This Memorandum may be terminated by one of the Authorities giving 30 days written notice to the other Authority that the understandings set out herein are no longer to have effect provided, however, that the provisions set forth shall not terminate with respect to any information provided or actions taken under the Memorandum prior to its termination.
28. All initial communications between the Authorities should be between the principal points of contact listed in Annexure 1 unless otherwise agreed. Any changes in principal contact points will be confirmed by letter.
29. This Memorandum is a statement of intent and does not create any legally binding obligations on either party.

This Memorandum was signed in Sydney, Australia on 23 May 2005.

**Confirmed:**

**China Banking Regulatory  
Commission**

By

Liu Mingkang  
Chairman

**Australian Prudential Regulation  
Authority**

By

Dr John Laker  
Chairman