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APRA

**Memorandum of Understanding on Mutual  
Assistance and the Exchange of Information  
between Autorité de Contrôle des Assurances et  
des Mutuelles (France) and the Australian  
Prudential Regulation Authority**

1. The Autorité de Contrôle des Assurances et des Mutuelles on the one hand, and the Australian Prudential Regulation Authority on the other hand, recognising the increasing international activity in insurance and other markets and the corresponding need for mutual co-operation between the relevant supervisory authorities as a means for improving their effectiveness in administering and enforcing the insurance and other laws of their respective jurisdictions, have reached the following understanding:

### **Definitions**

2. For the purposes of this Memorandum of Understanding, the terms set out below have the assigned meanings unless the context requires otherwise:

#### **Authority means:**

- (a) for France, the Autorité de Contrôle des Assurances et des Mutuelles (ACAM) ;
- (b) for Australia, the Australian Prudential Regulation Authority (APRA).

**cross border establishment** means a branch , a subsidiary or any other insurance/reinsurance entity or group operating or localised within one jurisdiction which falls under the consolidated or group wide supervision (or prospective supervision) responsibility of the other jurisdiction (listed in Appendix 1). Cross border establishments include those where ACAM and APRA are both host Authorities (although no list will be maintained).

**requested Authority** means an Authority to whom a request under this Memorandum is addressed.

**requesting Authority** means an Authority making a request under this Memorandum.

**insurance/reinsurance entity or group** means licensed (or prospectively licensed) institutions/ groups/ affiliates (or parts thereof) subject to the supervision (or prospectively subject to the supervision) of either Authority whose activities include underwriting of insurance or reinsurance.

**person** means a natural person, unincorporated association, partnership or body corporate, government, agency, or instrumentality of a government.

**laws, regulations and requirements** means the provisions of the laws, or the regulations and requirements promulgated thereunder, of France and Australia on insurance/reinsurance business.

**jurisdiction** means the territory of the country concerned under this Memorandum.

3. The Authorities recognise that while in their laws, regulations and requirements they may define terms differently, requests for assistance will not be denied solely on the grounds of differences in the definitions used by the requesting and requested Authorities.

### **Principles**

4. This Memorandum sets forth the basis upon which the Authorities in France and Australia reciprocally propose to provide for mutual assistance and the exchange of information for the purpose of facilitating the performance of their functions under the respective laws, regulations and requirements. The purpose of the Memorandum is to protect policyholders and potential policyholders of insurance/reinsurance entities or groups, and to promote the integrity, stability and efficiency of the insurance industry, by providing a framework for co-operation, increased mutual understanding, the exchange of information and assistance to the extent permitted by laws, regulations and requirements.
5. The Authorities intend to:
  - (a) use their best endeavours to ensure that the fullest mutual assistance is provided within the terms of the Memorandum; and
  - (b) engage in consultations, as appropriate, on mutually agreeable approaches designed to enhance the integrity and efficiency of their respective insurance markets and the exercise of insurance market supervisory functions.
6. The Authorities have various powers to obtain information in the exercise of supervisory functions that are within the scope of this Memorandum.

To the extent permitted by laws, regulations and requirements, each Authority will endeavour on a timely basis to provide the other Authority with any information that is in its possession or discovered which could be helpful to the other in the supervision of entities or groups under its jurisdiction.

7. The Memorandum does not modify or supersede any laws, regulations and requirements in force in, or applying to, France or Australia. Nor does it create any directly or indirectly enforceable rights.

### **Scope**

8. Each Authority proposes to ensure that mutual assistance is provided to the other, subject to its laws and overall policy, in the following areas of

administration and enforcement of the laws, regulations and requirements relating to the business of insurance:

- (a) administration of legislative provisions dealing with proposals for the establishment, acquisition and take-over of insurance/reinsurance entities or groups;
- (b) administration and enforcement of financial and other eligibility requirements for key positions of responsibility in insurance/reinsurance entities or groups, including ownership;
- (c) exchange of information, including information on solvency of insurance/reinsurance entities and groups, particularly cross border establishments;
- (d) continuing monitoring, auditing, inspection and examination of insurance/ reinsurance entities or groups for compliance with prudential, financial reporting and other supervisory requirements;
- (e) conduct of specific inquiries into the activities of the individual insurance/reinsurance entities or groups; and
- (f) fraudulent practices in relation to the offer, purchase or sale of insurance products.

The Authorities will endeavour to take into account the standards developed by the International Association of Insurance Supervisors where these are relevant.

9. In response to requests that satisfy the terms set out below under the heading "Requests for information and assistance", and subject to the conditions established, each Authority will provide the fullest possible measure of mutual assistance to the other subject to its laws and overall policy. Such assistance may include providing access to information which the requested Authority has at its disposal.

Each request will be assessed on a case by case basis by the requested Authority to determine whether assistance can be provided under the terms of the Memorandum.

10. The Authorities recognise the need and desirability of providing mutual assistance and exchanging information to assist each other in securing compliance with their respective laws, regulations and requirements. However, assistance may be denied on the grounds of public interest.
11. The Authorities intend to ensure that assistance will be provided in the maximum number of circumstances. However, the Authorities acknowledge that certain requests may relate to a possible breach of laws, regulations



and requirements that involve an assertion of jurisdiction not recognised by a requested Authority. Where a requested Authority considers that an assertion of jurisdiction in a matter that is the subject of a request would conflict seriously with and prejudice its sovereign interests the request will be denied.

12. The Authorities recognise that, so long as there are differences in the scope of the laws, regulations and requirements applying in each jurisdiction, conduct prohibited by the Authority in one country may not be prohibited by the Authority in the other. The Authorities intend to engage in consultations about individual cases falling outside the scope of the definition of laws, regulations and requirements to determine whether assistance will be provided in such cases.

#### **Requests for information and assistance**

13. The Memorandum does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that procedures in place in the jurisdiction of each Authority for the provision of such information are observed.
14. Any request for information or assistance made under this Memorandum will, wherever possible, be in writing, but in cases of urgency it may be oral and confirmed in writing within ten days.
15. To facilitate an appropriate and timely response, the requesting Authority should specify:
  - (a) the information or assistance required;
  - (b) the purpose for which the information or assistance is sought (including in appropriate cases, when a breach of the law is suspected, details of the law, regulation or requirement of the requesting Authority);
  - (c) when relevant, a description of any particular conduct or suspected conduct which has given rise to the request, and its connection with the jurisdiction of the requesting Authority;
  - (d) the relevance of the requested information or assistance to any suspected breach of law, regulation or requirement of the requesting Authority; and
  - (e) any information related to the urgency of the request for information or assistance.

The requested information must be reasonably relevant to securing compliance with the law, regulation or requirement specified in the request.

16. A request for information or assistance made under this Memorandum shall be addressed to the requested Authority's contact point listed in Appendix 2, or that individual's nominee.
17. In any case where the request cannot be accepted completely, the requested Authority will consider whether there may be other assistance which can be given. In particular, the requested Authority will consider in appropriate cases whether the request might be dealt with via channels for mutual assistance in criminal matters.
18. In any case where a requested Authority is not satisfied that a request fully complies with the requirements of the Memorandum, it may require the head of the requesting Authority to certify that the request meets the provisions in this Memorandum. The requested Authority should review its position in the light of such a certification.
19. In deciding whether to accept or decline a request the requested Authority will, in particular, take account of:
  - (a) matters specified by the laws and regulations in the country of the requested Authority;
  - (b) whether the request involves an assertion of jurisdiction not recognised by the country of the requested Authority;
  - (c) whether it would be contrary to the interest of the requested Authority to give the assistance sought; and
  - (d) the resources available to the requested Authority to deal with the request.
20. The requested Authority may, as a condition of agreeing that assistance is given under the Memorandum, require the requesting Authority to make a contribution to costs. Such a contribution may, in particular, be required where the cost of a request is substantial or where a substantial imbalance has arisen in the cumulative costs incurred.

#### **Permissible uses and confidentiality**

21. The information supplied will be used solely for the purpose of:
  - (a) improving the efficiency of the requesting Authority;
  - (b) securing compliance with or enforcement of the law, regulation or requirement specified in the request by initiating or assisting in criminal prosecution arising out of the breach of such law;
  - (c) conducting or assisting in civil proceedings arising out of the breach of the law, regulation or requirement specified in the

request and brought by the Authorities or other law enforcement or regulatory bodies within the jurisdictions of France or Australia; and

- (d) taking regulatory action or imposing regulatory requirements within the areas set out in paragraph 8 above.

22. To the extent permitted by law, each authority will keep confidential:

- (a) any request for information made under the Memorandum and any matters arising in the course of its operation, unless such disclosure is necessary to carry out the request, or the requested Authority specifically waives such confidentiality; and
- (b) any information passed under the Memorandum unless it is disclosed in furtherance of the purpose for which it was requested.

23. The requested Authority may set conditions on the use of confidential information, which the requesting Authority will abide by to the extent permitted by law in their jurisdiction.

24. Unless the request provides otherwise, the confidentiality provisions of the Memorandum shall not prevent the Authorities from informing other law enforcement or regulatory bodies within the jurisdictions of France and Australia of the request or of passing information received pursuant to a request to such bodies, provided that:

- (a) such agencies or bodies have responsibility for prosecuting, regulating or enforcing laws, regulations and requirements falling within the areas set out in paragraph 8 above;
- (b) the purpose of passing such information to such an agency or body falls within the areas set out in paragraph 8; and
- (c) the requesting Authority has provided any such undertaking in relation to the information requested which is required by the law of the jurisdiction of the requested Authority.

25. Regarding the application of confidentiality:

The ACAM may be compelled to disclose confidential information or documents to a legal authority acting under criminal prosecutions by enforcement of Article L.310-21 of the insurance law.

APRA may be compelled to disclose confidential or protected information or documents to third parties, including:



- (a) to Royal Commissions issued by the Government under the *Royal Commissions Act 1902*;
  - (b) to a Court in criminal proceedings or civil proceedings where it is necessary to do so for the purposes of a prudential regulation framework law; and
  - (c) to Parliamentary Committees.
26. The requesting Authority will notify the requested Authority of any legally enforceable demand for information it receives, and will assert such appropriate and relevant legal exemptions or privileges with respect to such information as may be available. The requesting Authority will consult with the requested Authority prior to complying with any such demand.
27. Where one party to this Memorandum in carrying out its obligations proposes voluntarily to disclose confidential information to a third party, it will solicit the providing Authority's views as to the propriety of the disclosure.

#### **Consultations and waiver**

28. The Authorities will keep the operation of this Memorandum under continuous review and consult with a view to improving its operation and resolving any matters. In particular, an Authority will consult the other Authority upon request in the event of:
- (a) a request being denied in whole or in part;
  - (b) a change in market or business conditions or in the laws, regulations or requirements governing insurance business, or any other difficulty arising which makes it necessary to amend or extend this Memorandum in order to achieve its purposes; or
  - (c) an assertion by the requested Authority that the provision of assistance would be so burdensome as to disrupt the proper performance of its functions.
29. Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement in both the territory of the requesting and the requested Authorities, the relevant Authorities will consult in order to determine the most appropriate means for each Authority to provide assistance.
30. This Memorandum may be amended by agreement in writing.



### Termination

31. This Memorandum will continue to have effect unless terminated by one of the Authorities by giving thirty days advance 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.

### Contact points

32. All communications between the Authorities should be between the principal points of contact listed in Appendix 2 unless otherwise agreed. Any changes to principal points of contact will be confirmed by letter.

### Entry into effect

33. This Memorandum will be effective from the date of its signature by the Secretary General of ACAM and the Chairman of APRA.

### On behalf of:

The Autorité de Contrôle des Assurances et des Mutuelles

By: 

Dated: 21 May 2007

~~Florence Lustman~~, Secretary General  
Antoine Mantel

The Australian Prudential Regulation Authority

By: 

Dated: 18 January 2007

Dr John Laker, Chairman

## **Appendix 1 - List of Cross Border Establishments**

AXA Group

SCOR Group