

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**THE MONETARY AUTHORITY**  
**and**  
**THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY**

In view of the fact that banking entities or groups incorporated in Australia have operations in Hong Kong, and in future there could be banking entities or groups incorporated in Hong Kong which establish operations in Australia, the Monetary Authority (“the MA”) and the Australian Prudential Regulation Authority (“APRA”) (“the Authorities”) have reached the following understanding in order to establish an arrangement for the sharing of supervisory information to facilitate the performance of their respective duties.

**Banking entity or group** means authorized (or prospectively authorized) 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 MA 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:
  - (i) an Australian banking entity or group or a Hong Kong branch, agency, representative office (collectively “Hong Kong branch”) or subsidiary of an Australian banking entity or group;
  - (ii) an Australian branch, representative office or subsidiary of a Hong Kong banking entity or group; and
  - (iii) banking entities where both the MA and APRA are host Authorities.
2. APRA will endeavour to notify the MA and provide relevant information it may have regarding a material supervisory concern or that may assist the MA in the performance of its functions or to improve its efficiency, in respect of:
  - (i) a Hong Kong banking entity or group or an Australian branch, agency, representative office (collectively “Australian branch”) or subsidiary of a Hong Kong banking entity or group;
  - (ii) a Hong Kong branch or subsidiary of an Australian banking entity or group; and
  - (iii) banking entities where the MA 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 organization; 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 MA 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 Hong Kong 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 MA and APRA recognize that close liaison between home and host Authority would be mutually advantageous. The MA 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 MA signed by an authorized official of APRA, the MA may, to the extent permitted by law, provide to APRA information contained in reports concerning Hong Kong 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 Hong Kong branches and subsidiaries in Hong Kong 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 authorized official of the MA, APRA may, to the extent permitted by law, provide to the MA information contained in reports concerning Australian branches or subsidiaries of Hong Kong banking entities or groups, and any other confidential information regarding a Hong Kong 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 10 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 authorization; (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 MA 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 Hong Kong 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 MA 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 MA 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 Hong Kong and Australia. In addition, the MA 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 MA.

#### **EXAMINATIONS**

13. The MA will seek the consent of APRA prior to examining any Australian branch or subsidiary of a Hong Kong banking entity or group located in Australia and APRA will seek the consent of the MA prior to examining any Hong Kong branch or subsidiary of an Australian banking entity or group in Hong Kong. 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 MA to conduct an examination of the Hong Kong branch or banking subsidiary of an Australian banking entity or group and the MA may request on an exceptional basis APRA to conduct an examination of the Australian branch or banking subsidiary of a Hong Kong 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 MA, 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 MA pursuant to this Memorandum and shall not disclose such information other than in accordance with such conditions (if any) attached by the MA to the provision of such information and as necessary to carry out its lawful supervisory responsibilities.
18. To the extent permitted by law, the MA 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 recognizable privilege as to any person other than the parties to this Memorandum.
23. The MA 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 MA/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 MA and APRA, provided, however, that the provisions set forth under the headings “Confidentiality” 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 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. The Authority from whom assistance is sought may, as a condition of agreeing to give assistance under this Memorandum, require the other Authority to make a contribution to costs. Such a contribution may, in particular, be required if the cost of fulfilling a request is likely to be substantial or if a substantial imbalance has arisen in the cumulative costs incurred.
29. All 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.

30. This Memorandum is a statement of intent and does not create any legally binding obligations on either party.


**CONFIRMED:**

**Monetary Authority**

By   
Mr William Kybaek  
Deputy Chief Executive

Dated : *27 April 2005*

**Australian Prudential Regulation Authority**

By   
Dr John Laker  
Chairman

Dated : *12 April 2005*