



MEMORANDUM OF UNDERSTANDING

BETWEEN

**AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA)
AUSTRALIA**

AND

**FINANCIAL SERVICES COMMISSION (FSC)
FINANCIAL SUPERVISORY SERVICE (FSS)
REPUBLIC OF KOREA**

CONCERNING

CO-OPERATION IN FINANCIAL SUPERVISION

August 2011

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 financial regulation functions.
2. This MOU is a statement of intent and does not create any legally binding obligations on the Authorities.
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*.
4. For the purpose of this MOU:

Cross-border establishment means a branch, a subsidiary 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 (Annexure A). Cross-border establishments include those where the Authorities are both host-country Authorities (but no list of these entities will be maintained).

Host-country authority means the Authority which supervises a branch, representative office, subsidiary or sub-group of an entity (the parent entity) which is supervised in another country.

Home country authority means the Authority which supervises the parent entity.

The Authorities

5. APRA is the national prudential regulator in Australia, established on 1 July 1998 under the *Australian Prudential Regulation 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. The Financial Services Commission (FSC) is vested by the *Act on the Establishment, etc. of Financial Services Commission of the Republic of Korea* with the task of performing broad supervisory functions in financial supervision, mainly licensing financial business, revising and drafting financial regulations and formulating financial policies, and instruction and supervision of the Financial Supervisory Service (FSS). The FSS examines and supervises financial institutions, including oversight and enforcement functions as mandated by the FSC. As the implementation body of the FSC by the laws relevant, the FSS may accordingly participate in the implementation of this MOU.

General Principles

7. The Authorities will, within the framework of this MOU, provide each other with all reasonable assistance to promote the safe and sound functioning of regulated entities, subject to domestic laws and the Authorities' overall policies.
8. Requests for assistance or information will be made in writing by designated employees of the Authority and will be addressed to the other Authority's contact persons named in Annexure B. However, where the Authorities perceive a need for expedited action, requests may be initiated in any form but should be confirmed subsequently in writing, within 10 business days.
9. The Authorities recognise that the provision of information may be denied on the grounds of national security or when disclosure would interfere with an ongoing investigation. Where a request for information is denied the Authority in receipt of the request will provide the reasons for not providing the information. That Authority can also set conditions on the use of information provided to the Authority making the request.
10. The Authorities will mark all documents received pursuant to this MOU, "CONFIDENTIAL - RECEIVED PURSUANT TO MEMORANDUM OF UNDERSTANDING BETWEEN APRA AND FSC/FSS."

Confidentiality

11. The Authorities agree to use their best endeavours to preserve the confidentiality of the information received pursuant to this MOU. In this regard, employees of the Authorities will hold confidential all information obtained in the course of their duties. Any confidential information received from the other Authority will be used exclusively for lawful supervisory purposes.
12. The Authorities may disclose information received from each other pursuant to this MOU to third parties in the following circumstances:
 - (a) where they are legally compelled to do so, for example to a Court or Royal Commission;
 - (b) where they receive a legally enforceable demand, for example under Freedom of Information laws; and,
 - (c) in other circumstances permitted by law.
13. When an Authority is legally compelled to disclose information provided in accordance with this MOU to a third party, the Authority will promptly notify the other Authority indicating what information it is compelled to release and the circumstances surrounding its release. The Authority will, if requested, use its best endeavours to preserve the confidentiality of the information to the extent permitted by law.
14. When an Authority wishes to disclose information received under this MOU to a third party, but is not compelled to do so, the Authority will notify and obtain consent from the other Authority. If the Authority providing the information requires, the Authority which has received the information will consult with the former and consider imposing conditions on the release and subsequent use of the information. In any event, so far as possible, the Authority releasing the information to a third party will impose on that third party a condition that the information be kept confidential and not be further released without its consent.

Cross-Border Establishments

15. The host-country Authority should notify the home-country Authority, without delay, of applications for approval to establish cross-border entities or to make an acquisition in the host-country jurisdiction.
16. Upon request, the home-country Authority will inform the host-country Authority whether the applicant entity is in substantial compliance with its laws and regulations and whether the entity may be expected, given its administrative structure and internal controls, to manage the cross-border establishment in an orderly manner. The home-country Authority will also, upon request, assist the host-country Authority by verifying or supplementing any information submitted by the applicant entity.
17. Upon request, the home-country Authority will inform the host-country Authority about the nature of its regulatory system and the extent to which it will conduct consolidated or group-wide supervision over the applicant entity. Similarly, the host-country Authority will indicate the scope of its supervision and indicate any specific features that might give rise to the need for special arrangements.
18. To the extent permitted by law, the Authorities will share available information on the fitness and propriety of prospective directors, managers and relevant shareholders of a cross-border establishment.
19. The host-country Authority will not prevent the home-country Authority from conducting on-site inspections of cross-border establishments.
20. Prior to 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.
21. The home-country Authority will notify the host-country Authority 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 will keep each other informed on the results of any inspections in a timely manner. If the parent entity has been inspected along with its cross-border establishment in the other country, the home-country Authority will provide the host-country Authority with a summary report on material findings that are relevant to the cross-border establishment

Ongoing Supervision

22. The Authorities intend to provide relevant information to each other with regard to its involvement in financial supervision, in a timely and reasonable manner. Each will inform its counterpart of material administrative penalties imposed, or other formal enforcement action taken, against any cross-border establishment, its management or, in cases of systemic impact, its shareholders. Prior notification of such action shall be given, as far as practicable and subject to applicable laws.
23. The Authorities intend to co-operate closely when they identify suspected financial crime activities in supervised entities and transactions. Financial crimes include money laundering, unauthorised banking, investment or insurance business and all other violations of the law governing the financial institutions subject to the Authorities' regulation.

Regulatory Policy Development

24. The Authorities will respond to 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

25. The Authorities will conduct meetings as often as appropriate to discuss issues concerning financial entities, or groups that maintain cross-border establishments and to review the effectiveness of co-operation arrangements. The Authorities also intend, where practical, to promote their co-operation by visits for informational purposes.

26. Unless otherwise notified, contact will be between the principal contact persons set out in Annexure B.
27. Each Authority will independently bear the expenses incurred in the implementation of this MOU. If it appears that an Authority will incur substantial costs in responding to a particular request for information, it may approach the other Authority with a view to negotiating a cost-sharing arrangement in relation to the provision of that information.

On behalf of:

**Australian Prudential
Regulation Authority**

By  

Chairman John Laker

Dated 22 August 2011

Financial Services Commission

By  

Chairman Seok-Dong Kim

Dated 28 August 2011

Financial Supervisory Service

By  

Governor Hyouk-Se Kwon

Dated Oct. 22, 2011

Annexure A:

List of Cross-border Establishments (Excluding those where APRA and FSC/FSS are both Host-Country Authorities)

AUSTRALIA

Australia and New Zealand Banking Group
Macquarie Bank Limited

REPUBLIC OF KOREA