

## Memorandum of Understanding Concerning co-operation in banking supervision

Between

The Australian Prudential Regulation Authority (APRA)

And

The Banque du Liban (BDL)

Represented by

The "Banking Control Commission of Lebanon" (BCCL)

(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 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*, and in Lebanon the *Banking Secrecy Law* and laws relating to the fighting of money laundering and terrorism financing.

4. For the purpose of this MOU:

**Banking** includes entities which are not called a “bank” but which conduct banking business and are regulated and supervised by the APRA and the BCCL.

**Cross-border Establishment** means a branch, a subsidiary, a representative office or any other 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 is to 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 certain superannuation funds authorised to operate in Australia.
6. The BDL is the central bank of Lebanon. It was established by the Code of Money and Credit, and started effective operations on 1 April 1964. Its functions include the licensing of banks, financial institutions, money dealers, brokerage firms and leasing companies operating in Lebanon. It issues regulations, directives and circulars that ensure safety and soundness of the financial sector.
7. The BCCL was established, within the BDL, in 1967 by virtue of Law no.28/67. It is not a juridical person. Its function is to supervise banks, financial institutions, money dealers, brokerage firms and leasing companies in Lebanon. The BCCL is independent in exercising its supervisory functions, but in close cooperation with the Governor of the BDL. The BCCL performs its duties through periodic on-site and off-site examinations and evaluates financial soundness of regulated entities.

## General Principles

8. The Authorities expect, within the framework of this MOU, to share supervisory information and to 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, including secrecy laws. Information-sharing is expected to include contact during:
  - (a) the authorisation and licensing process of a Cross-border Establishment;
  - (b) the supervision of the on-going activities of Cross-border Establishment;

- (c) the setting up of further branches of a Cross-border Establishment or when there is a change in ownership that is subject to the permission of the relevant Authority; and
  - (d) revocation of a license of a Cross-border Establishment.
- 9. The Authorities expect that 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.
- 10. APRA notes that any request made by it for documents or information which contain the name, details of amounts in debit funds, or other personal information concerning the customer or client of an entity which is regulated by BDL, will be referred by BDL to the relevant supervised entity in order to obtain the prior consent of the client or customer to the release of the information to APRA. APRA further notes that BDL will not refer requests made by APRA to BDL for any other type of information to any third party, including the supervised entity. For any entity it regulates, BDL shall not be under the obligation to furnish any client or customer information referred to in this paragraph, without the consent of the client or customer to which it refers.
- 11. It is intended that information within the framework of this Memorandum be provided to the extent reasonable and subject to legislative provisions including the Authorities' respective banking secrecy laws. 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 or would run counter to its applicable legislation.

Where a request for information is denied the Authority who made the request expects that it will be provided with the reasons for not providing the information. Conditions may also be imposed on the use of information provided to the Authority making the request.

- 12. The Authorities expect each other to mark all documents received under this MOU, "CONFIDENTIAL - RECEIVED UNDER MEMORANDUM OF UNDERSTANDING BETWEEN APRA AND BANQUE DU LIBAN".

### **Confidentiality**

- 13. The Authorities understand that they will use their best endeavours to preserve the confidentiality of the information received under 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 is to be used exclusively for lawful supervisory purposes.
- 14. The Authorities may disclose information received from each other under 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.
15. When an Authority is legally compelled to disclose information provided in accordance with this MOU to a third party, the Authority is expected, prior to passing it to a third party, to promptly notify the other Authority indicating what information it is compelled to release, and the circumstances surrounding its release. The Authorities expect each other, if requested to do so, to use its best endeavours to preserve the confidentiality of the information to the extent permitted by law.
  16. When an Authority wishes to disclose information received under this MOU to a third party, but is not compelled to do so, the Authority is expected to notify the other Authority and to obtain its prior consent in writing. The Authority which has received the information is expected, in consultation with the Authority providing the information, to 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 is expected to impose on that third party a condition that the information must be kept confidential and not be further released without its consent.

#### **Cross-Border Establishments**

17. The Host-country Authority is expected to 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.
18. Upon request, the Home-country Authority is expected to 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 is also expected, upon request, to assist the Host-country Authority by verifying or supplementing any information submitted by the applicant entity.
19. Upon request, the Home-country Authority is expected to 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 is expected to indicate the scope of its supervision and indicate any specific features that might give rise to the need for special arrangements.
20. To the extent permitted by law, the Authorities expect to share available information on the fitness and propriety of prospective directors, managers and relevant shareholders of a Cross-border Establishment.
21. The Home-country Authority does not expect that it will be prevented from conducting on-site inspections of Cross-border Establishments.
22. 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.

23. The Home-country Authority is expected to 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 expect to 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 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**

24. The Authorities intend to provide relevant information to each other with regard to its involvement in banking supervision and regarding material developments or supervisory concerns in respect of the operations of Cross-border Establishments, in a timely and reasonable manner. Each expects to 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. The Authorities expect each other to give prior notification of such action, in so far as it is practicable and subject to applicable laws.
25. The Authorities intend to co-operate closely when they identify suspected financial crime activities in supervised entities and transactions. Financial crimes include unauthorised banking or investment business and all other violations of the law governing the financial sector subject to the Authorities' regulation.

### **Regulatory Policy Development**

26. The Authorities expect to 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**

27. The Authorities expect to conduct meetings as often as appropriate to discuss issues concerning banking entities, 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 informational purposes.
28. Unless otherwise notified, contact will be between the principal contact persons set out in Annexure B. Any changes to principal contact persons will be confirmed by letter.
29. Each Authority expects to bear the expenses incurred by them 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 it may approach the other Authority with a view to negotiating a cost-sharing arrangement in relation to the provision of that information.

30. The Authorities shall continue to honour the terms of this MOU unless one of the parties requests its termination in writing. However, the last and existing request for assistance made prior to such notification shall be honoured by the Authorities if possible under the conditions set forth under this MOU.
31. All information obtained under this Memorandum of Understanding will continue to be treated confidentially, in the event of its termination.

On behalf of:

The Australian Prudential Regulation Authority

By \_\_\_\_\_

Dated 21 October 2011

Dr John Laker  
Chairman

On behalf of:

The Banque du Liban

By \_\_\_\_\_

Dated 26-OCTOBER-2011

Usama Mikdashi  
Chairman of BCCL who holds a delegation from BDL to sign on its behalf

**Annexure A: List of Cross-border Establishments (Excluding those where APRA and BDL are both Host-country Authorities)**

**Bank of Beirut s.a.l**

**Beirut Hellenic Bank Ltd**