

MEMORANDUM OF UNDERSTANDING

between the

**AUSTRALIAN PRUDENTIAL REGULATION
AUTHORITY**

and the

MALTA FINANCIAL SERVICES AUTHORITY

Memorandum of Understanding concerning co-operation in banking and insurance supervision

between

The Australian Prudential Regulation Authority (APRA)

and

The Malta Financial Services Authority (MFSA)

(together “the Authorities”)

Background

1. This Memorandum of Understanding (MOU) sets out a formal 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. The Authorities believe such co-operation will enable them to perform their functions more effectively.
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* (MABRA).
4. For the purpose of this MOU:

Banking includes entities which are not called a “bank” but which conduct banking business. In Malta “banking business” shall mean the business of banking as defined in the Maltese *Banking Act*.

Cross-border Establishment means a branch, a subsidiary or any other banking or insurance entity or group within one jurisdiction which falls under the consolidated or group-wide supervision (or prospective supervision) and responsibility of the other jurisdiction (Annexure B). 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 all superannuation funds authorised by it to operate in Australia.
6. The MFSA is a public authority established by an Act of Parliament (the *Malta Financial Services Authority Act*). It has statutory powers of licensing, supervision and investigation, and has the ability to exercise its powers for the purpose of co-operation with foreign authorities. The MFSA is responsible for the regulation and supervision of credit and financial institutions, the business of insurance and insurance intermediaries’ activities, investment services, collective investment schemes, retirement funds, trustees, regulated markets and central securities depositories. It also incorporates the Registry of Companies.

General Principles

7. The Authorities expect, within the framework of this MOU, 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.
8. The Authorities expect each other to mark all documents received under this MOU, “CONFIDENTIAL - RECEIVED UNDER MEMORANDUM OF UNDERSTANDING BETWEEN APRA AND MFSA”.

Requests for Assistance

9. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to its laws and overall policy. Assistance may include:
 - (a) providing information in the possession of the requested authority including on particular institutions/groups/affiliates (or parts thereof) with operations supervised (or prospectively supervised) by either Authority;
 - (b) confirming or verifying information provided to it for that purpose by the requesting Authority;

- (c) exchanging information on, or discussing issues of mutual interest, including on prudential policy and practice;
- (d) obtaining specified information and documents from persons;
- (e) questioning or taking testimony of persons designated by the requesting Authority;
- (f) conducting inspections or examinations of financial services providers or arranging for the same; and
- (g) permitting the representatives of the requesting Authority to participate in the conduct of enquiries made by or on behalf of the requested Authority pursuant to paragraphs (e) - (f) above.

Procedure for Requests

10. Requests for the provision of information or other assistance may be made in writing, or made orally and, unless otherwise agreed, confirmed in writing within ten business days. To facilitate assistance, the requesting Authority could specify in any written request:
 - (a) the information or other assistance requested (identity of persons, issues to be pursued, questions to be asked etc.);
 - (b) if information is provided by the requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
 - (c) the purpose for which the information or other assistance is sought;
 - (d) to whom, if anyone, onward disclosure of information provided to the requesting Authority is likely to be necessary and, in relation to onward disclosure to a person who is not a permitted onward recipient, the purpose such disclosure would serve;
 - (e) if the request for assistance is for the purpose of actual or possible enforcement action, the matters set out in clause 1 of Annexure A.
11. Further to a written request for assistance in accordance with paragraph 10 above, the requested authority may specify in writing any other matters it may deem necessary or which are required by any of the requested authority's applicable laws and regulations.

Assessing Requests

12. Each request for assistance will be assessed on a case-by-case basis by the requested Authority to determine whether assistance can be provided under the terms of this MOU. In any case where the request cannot be fulfilled in part or whole, the requested Authority may consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction. The requested Authority will inform the requesting Authority promptly of the outcome of its consideration of a request. Where this consideration may take some time, the requested Authority will regularly notify the requesting Authority of progress in its consideration of the request.
13. In deciding whether and to what extent to fulfil a request, the requested Authority may take into account some or all of:
 - (a) whether the request conforms with this MOU;

- (b) whether the request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the requested Authority;
 - (c) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Authority's functions;
 - (d) whether it would be otherwise contrary to the public interest or the essential national interest of the requested Authority's jurisdiction to give the assistance sought;
 - (e) if the request for assistance is for the purpose of actual or possible enforcement action, the further matters set out in clause 2 of Annexure A;
 - (f) any other matters specified by the laws, regulations and requirements of the requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and
 - (g) whether complying with the request may otherwise be prejudicial to the performance by the requested Authority of its functions.
14. The Authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 13 at the discretion of the requested Authority.
15. The further procedures set out in Annexure A will apply in relation to actual or possible enforcement matters.

Confidentiality

16. 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.
17. 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.
18. When an Authority is legally compelled to disclose information provided in accordance with this MOU to a third party, the Authority is expected 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 their best endeavours to preserve the confidentiality of the information to the extent permitted by law.
19. 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. If the Authority providing the information so requests, the Authority which has received the information is expected, in consultation with the former, to consider imposing conditions on

the release and subsequent use of such 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 be kept confidential and not be further released without its consent.

Cross-Border Establishments

20. 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.
21. 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.
22. 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.
23. 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.
24. The home-country Authority does not expect that it will be prevented from conducting on-site inspections of cross-border establishments.
25. 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.
26. 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.
27. A list of cross-border establishments at the time of signing this MOU is at Annexure B. Annexure B may be amended by the Authorities by exchange of letters.

Ongoing Supervision

28. The Authorities intend to provide relevant information to each other with regard to their involvement in banking or insurance supervision, in a timely and reasonable manner. Each expects to inform their 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.

29. The Authorities intend to co-operate closely when they identify suspected financial criminal activities in supervised entities and transactions, financial crimes, 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

30. The Authorities expect to respond to requests for information on their respective national regulatory systems and inform each other about major changes, particularly those that have a significant bearing on the activities of cross-border establishments.

General

31. The Authorities may, if necessary and appropriate, conduct meetings to discuss issues concerning specific banking or insurance entities, or groups that maintain cross-border establishments, and to review the effectiveness of cooperation arrangements. The Authorities also may, where practical, promote their co-operation by visits for informational purposes.
32. A list of contact points to which information or requests for information or assistance under this MOU should be directed is found in Annexure C. Any changes to the principal contact persons will be confirmed by letter.
33. 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.
34. The Authorities will keep the operation of the MOU under review and will consult when necessary with a view to improving its operation and resolving any matters. 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 to determine the most appropriate means for each Authority to provide assistance.
35. This MOU will take effect when both Authorities have signed it and will continue to have effect until terminated by either Authority giving 30 days advance written notice to the other Authority. It may be amended in writing by agreement of both Authorities.

On behalf of:

The Australian Prudential Regulation Authority

By



Dated

10 June 2010

Dr John Laker
Chairman

The Malta Financial Services Authority

By



Dated

14 June 2010

Prof. Joseph Bannister
Chairman

Annexure A: Further Procedure for Enforcement Matters

Further Details to be Contained in Requests for Assistance

1. If a request for assistance as described in this MOU relates to actual or possible enforcement action, the following further details may be contained in the request:
 - (a) a description of the conduct or suspected conduct which gives rise to the request;
 - (b) details of the applicable law, regulation or requirement to the administration of which the request is relevant;
 - (c) the link between the specified rule or law and the regulatory functions of the requesting Authority;
 - (d) the relevance of the requested assistance to the specified rule or law;
 - (e) whether it is desired that, to the extent permitted by the laws applying to the requested Authority, any persons from the country of the requesting Authority should be present during interviews which form part of an investigation, and whether it is desired that such persons should be permitted to participate in the questioning (as to which see clause 3 below); and
 - (f) any other details required under the laws of the jurisdictions of the Authorities (for example MABRA).

Further Ground for Denial of Request

2. If a request for assistance as described in this MOU relates to actual or possible enforcement action, the following further matter may be taken into account by the requested Authority in determining whether to fulfil the request in whole or in part:
 - (a) whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against a person who, in the opinion of the requested Authority has already been appropriately dealt with in relation to the alleged breach the subject-matter of the request.

Requests to Sit In

3. If, following a request from the requesting Authority, the requested Authority conducts an interview of any person, the requested Authority may permit a representative of the requesting Authority to attend such an interview and to ask questions. Such requests will be in accordance with the applicable laws, regulations and requirements of the requested Authority. Requests for such assistance should conform to any published guidance for the making of such requests issued by the requested Authority.

Joint Investigations

4. The Authorities acknowledge that, subject to secrecy and confidentiality issues, an investigation, where it concerns suspected breaches of the law of both jurisdictions, may be conducted more effectively by the establishment of a joint investigation involving members from both Authorities.

5. The Authority suggesting the joint investigation will advise the other Authority of the background to the request for a joint investigation, and liaise with the other Authority to determine the likely objectives of the joint investigation, the expected resources required, and the approximate duration of the proposed joint investigation. Each authority will advise the other as soon as possible as to whether it will agree to such an investigation.
6. If the Authorities agree to take part in a joint investigation, an agreed initial action plan will be prepared setting out, among other things, the objectives, expected duration, funding, publicity and accountability arrangements, management of the joint investigation, and allocation of responsibilities.
7. Suggestions to MFSA or to APRA for a joint investigation should be made through the Principal Contact Persons listed in Annexure C.

Rights of Persons Preserved

8. Any person providing testimony, information or documents as a result of a request made under this MOU will be entitled to all the rights and protections of the laws of the jurisdiction of the requested Authority. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the requesting Authority, the Authorities will consult to determine the most appropriate way to proceed.

Annexure B: List of Cross-border Establishments (Excluding those where APRA and MFSA are both Host-Country Authorities)

CommBank Europe Ltd