

# **Memorandum of Understanding**

**between**

**the Australian Prudential Regulation Authority**

**and**

**the Bundesanstalt für Finanzdienstleistungsaufsicht of  
Germany**

**concerning co-operation in banking and insurance supervision**

1. The Australian Prudential Regulation Authority (APRA) and the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) have reached the following understanding for supervisory co-operation and information sharing to facilitate the performance of their respective duties and to promote the safe and sound functioning of financial institutions and groups, including banking and insurance/reinsurance entities or groups, in their respective countries.

2. APRA and the BaFin (collectively, "the Authorities") express, through this Memorandum, their willingness to cooperate with each other on the basis of mutual trust and understanding in the supervision of cross-border establishments within their respective jurisdictions.

For the purpose of this Memorandum:

"cross-border establishment" means a branch, a subsidiary or any other banking and/or insurance/reinsurance entity or group within one jurisdiction which falls under the consolidated or group-wide banking and/or insurance/reinsurance supervision (or prospective supervision) responsibility of the other jurisdiction (Annex A). Cross-border establishments include those where APRA and the BaFin are both host-country Authorities (but no list of these entities will be maintained);

"banking entity or group" means authorised (or prospectively authorised)

institutions/groups/affiliates (or parts thereof) whose activities include banking business and with operations supervised (or prospectively supervised) by either Authority; and

“insurance/reinsurance entity or group” means authorised (or prospectively authorised) institutions/groups/affiliates (or parts thereof) whose activities include underwriting of insurance or reinsurance and with operations supervised (or prospectively supervised) by either Authority.

### **The Authorities**

3. APRA is the national prudential regulator in Australia, established on 1 July 1998 under the *Australian Prudential Regulation Act 1998* (the APRA Act). 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.

4. The BaFin was established on 1 May 2002 by the Law on Integrated Financial Services Supervision (Gesetz über die integrierte Finanzaufsicht - FinDAG). The BaFin is a federal institution governed by public law within the purview of the Federal Ministry of Finance and has a legal personality. In exercising its sovereign functions the BaFin, as the sole responsible Authority for the supervision of banks, financial services institutions and insurance companies, co-operates closely with the Deutsche Bundesbank in carrying out the on-going day-to-day supervision of banks and investment firms. The BaFin and the Deutsche Bundesbank are hereinafter jointly referred to as “German banking supervisors”.

### **Scope and General Principles**

5. The provisions of this Memorandum are not intended to create legally binding obligations or supersede domestic laws.

6. The Authorities will, within the framework of this Memorandum, 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.

7. The Authorities recognise that the provision of or request for information under this Memorandum may be denied on the grounds of national security or when disclosure would interfere with an ongoing investigation. Where a request for assistance is denied, or where assistance is not available under domestic law, the requested Authority will provide the reasons for not granting the assistance. The requested Authority can set conditions on the use of confidential information provided to the requesting Authority.

8. Requests for assistance will be made in writing by designated employees of the Authority and will be addressed to the requested Authority's contact persons in Annex 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.

### **Confidentiality**

9. APRA and the BaFin recognise that mutual trust between supervisory Authorities can only be achieved if exchanges of information can flow with confidence in both directions. Both Authorities agree to use their best endeavours to preserve the confidentiality of the information received. In this regard, employees of the Authorities are bound to 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, and will not be disclosed except as set out below.

10. According to law, APRA may share protected information or documents as set out in subsections 56 (3) to (8) inclusive of the APRA Act. Circumstances where APRA may be compelled to disclose protected or confidential information to a third party include:

- (a) to a Court in criminal or civil proceedings or to Royal Commissions issued by the Government under the *Royal Commissions Act 1902* where it is necessary to do so for the purposes of a prudential regulation framework law;

(b) to Parliamentary Committees.

According to law, the BaFin may share protected information as set out in sections 9 of the German Banking Act (KWG) and 84 of the Law on the Supervision of Insurance Undertakings (VAG). BaFin may be obliged to disclose confidential information to the following third parties:

(a) criminal prosecuting authorities or the competent courts for administrative fine and criminal matters;

(b) agencies which, by virtue of an act of Parliament or by official order, are entrusted with the supervision of insurance undertakings, credit institutions, financial services institutions, investment companies, other financial institutions, the financial markets or the payments system, and to persons commissioned by such agencies;

(c) central banks;

(d) agencies dealing with the liquidation or insolvency proceedings over the assets of an insurance undertaking, a credit institution, a financial services institution, an investment company or another financial institution;

(e) persons entrusted with the legal auditing of the accounts of insurance undertakings, credit institutions, financial services institutions, investment companies or other financial institutions, as well as agencies supervising these auditors;

(f) institutions for the management of guarantee funds;

(g) to a deposit guarantee scheme or an investor compensation scheme; or

(h) stock markets or financial futures exchanges.

11. The BaFin will pass on the information received from APRA to the Deutsche Bundesbank to the extent that such information is of significance for the performance of the functions of the Deutsche Bundesbank as outlined in Section 7 of the German Banking Act. The Deutsche Bundesbank is obliged to treat all such information as confidential.

12. An Authority may subsequently receive a request from a third party for confidential information provided under this Memorandum, or, alternatively, consider it appropriate or prudent to pass on confidential information to a third party, including a third party supervisory Authority who has a legitimate common interest in the matter. Prior to passing information to the third party, the requested Authority will consult with and seek agreement from the Authority that originated the information, who may attach conditions to the release of the information, including that the third party be bound to hold the information confidential.

13. In the event that an Authority is legally compelled to disclose to a third party, including a third party supervisory Authority, information that has been provided in accordance with this Memorandum, the requesting Authority should promptly notify the Authority that originated the information, indicating what information it is compelled to release and the circumstances surrounding its release. If so required by the originating Authority, the requesting Authority will use its best endeavours to preserve the confidentiality of the information to the extent permitted by law. The Authorities will inform each other of the circumstances in which they may be subject to legal compulsion to release information obtained.

### **Authorisation Process**

14. The host-country Authority should notify the home-country Authority, without delay, of applications for approval to establish cross-border establishment(s) or make acquisition(s) in the host-country jurisdiction.

15. Upon request, the home-country Authority will inform the host-country Authority whether the applicant banking or insurance/reinsurance entity or group is in substantial compliance with banking and/or insurance laws and

regulations and whether the banking or insurance/ reinsurance entity or group 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 banking or insurance/reinsurance entity or group.

16. Where an Authority is considering an application for approval to establish cross-border establishment(s) or make acquisition(s) it may consult the other Authority if it is already a host-country Authority to 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 banking or insurance/reinsurance entity or group. 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.

### **Ongoing Supervision**

19. The Authorities intend to provide relevant information to their counterpart, including that which may be sourced from the Deutsche Bundesbank with regard to its involvement in banking supervision, in a timely manner and to the extent reasonable, regarding any event that has the potential to have a material adverse impact on the operations of a cross-border establishment in the other country. Each will inform their counterpart of material administrative penalties imposed, or other formal enforcement action taken, against a 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.

20. The Authorities will respond to requests for information on their respective

national regulatory systems and inform each other about major changes, in particular those that have a significant bearing on the activities of cross-border establishments.

21. This Memorandum does not affect the ability of the Authorities to 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 section 6 of the *Mutual Assistance in Business Regulation Act 1992* in Australia and section 44 of the German Banking Act and section 83 of the German Insurance Act.

### **On-site Inspections**

22. The Authorities agree that co-operation is particularly useful in assisting each other in carrying out on-site inspections of cross-border establishments of banking and insurance/reinsurance entities or groups. APRA will cooperate with the BaFin or the examiner (auditors/certified public accountants or Deutsche Bundesbank) commissioned by the BaFin, to carry out or accompany inspections of branches and subsidiaries of German banking or insurance/reinsurance entities or groups authorised in Australia. In return, the BaFin will cooperate with APRA to carry out or accompany inspections of branches and subsidiaries of Australian banking or insurance/reinsurance entities or groups authorised in Germany. The Authorities will not prevent each other authority from conducting on-site inspections. Prior to deciding whether an on-site examination is necessary, the home-country Authority should review any relevant examination or other supervisory reports prepared by the host-country Authority.

23. The home-country Authority will notify the host-country Authority of plans to 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 examination. The host-country Authority reserves the right to accompany the home-country Authority on such an examination. The Authorities will keep

each other informed on the results of the inspections, if of interest to the host-country Authority, to the extent reasonable and in a timely manner. If the parent institution has been examined 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.

24. The Authorities may agree to cooperate with each other in conducting inspections where they are both host-country Authorities of related banking and insurance/reinsurance entities or groups.

### **Financial Crime**

25. The Authorities intend to co-operate closely when they identify suspected financial crime activities in supervised banking and insurance/reinsurance entities or groups and transactions. For the purposes of this Memorandum, financial crimes include money laundering, unauthorised banking, investment or insurance business and all other violations of the law governing financial markets.

### **Ongoing Coordination**

26. Each Authority will make all reasonable efforts to provide, without prior request, the other Authority with any information that it considers is likely to be of assistance to the other Authority to promote the safe and sound functioning of regulated entities.

27. The Authorities, and the Deutsche Bundesbank as involved in banking supervision, will conduct meetings as often as appropriate to discuss issues concerning banking and/or insurance/reinsurance entities, conglomerates or groups that maintain cross-border establishments in the respective jurisdictions and to review the effectiveness of cooperation arrangements. APRA and the German Banking Supervisors also intend, where practical, to promote their co-operation by visits for informational purposes.

28. Unless otherwise decided, all communications between the Authorities will



be between the principal contact persons set out in Annex B. This Annex may be amended by written notice from either Authority without the need to amend this Memorandum.

### Costs

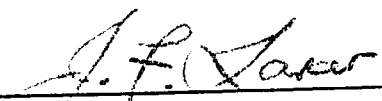
29. Each party shall independently bear the expenses incurred in the implementation of this Memorandum, unless a different procedure is agreed upon.

### Terms and Modifications

30. This Memorandum shall enter into force as of the later of the two dates written below and shall continue indefinitely subject to modification by the mutual consent of the Authorities or termination by either party with 30 days advance notice to the other party. After termination, the confidentiality provisions shall continue to apply to any information provided under this Memorandum prior to termination.

### On behalf of:

**the Australian Prudential Regulation Authority**

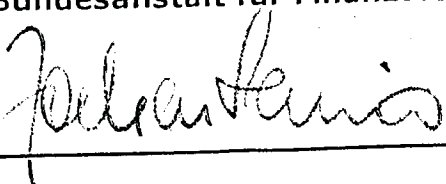
By 

Dr John Laker

Chairman

Dated: 3 June 2005

**the Bundesanstalt für Finanzdienstleistungsaufsicht**

By 

Jochen Sanio

President

Dated: 3 June 2005

**Annex A: List of Cross-border Establishments (Excluding those where APRA and the BaFin are both Host-Country Authorities)**

**Insurance/Reinsurance Entities or Groups**

The Allianz Group

AssetInsure Pty Limited

The Gerling Group

The Hannover Re Group

The Munich Re Group

The Cologne Group

**Banking Entities or Groups**

Australia and New Zealand Banking Group Limited

The Deutsche Bank Group

The WestLB Group