



Memorandum of Understanding

Between

Australian Prudential Regulation Authority ("APRA")

and

De Nederlandsche Bank N.V. ("DNB")

concerning co-operation in prudential banking and insurance
supervision and information sharing



Recitals

1. 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.
2. DNB is the national prudential supervisor of financial institutions in the Netherlands. In her capacity as prudential supervisor DNB supervises banks, insurance companies, pension funds, securities firms and collective investment schemes authorised to operate in the Netherlands for risk management, integrity, solvency and liquidity as well as compliance with legislation and regulation.
3. APRA and DNB have reached the following understanding for prudential supervisory co-operation and information sharing regarding banks and insurance companies to facilitate the performance of their respective duties and to promote the safe and sound functioning of financial institutions and groups in their respective countries.
4. APRA and DNB express, through this Memorandum of Understanding, their willingness to cooperate with each other on the basis of mutual trust and understanding in the prudential supervision of cross-border establishments within their respective jurisdictions.

Definitions

5. For the purpose of this Memorandum of Understanding:
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“APRA” means the Australian Prudential Regulation Authority;

“Authorities” means APRA and DNB collectively;

“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;

“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.

“DNB” means De Nederlandsche Bank NV;

“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; and

“MoU” means this Memorandum of Understanding.

Scope and General Principles

6. The provisions of this MoU are not intended to create legally binding obligations or supersede domestic laws. This MoU sets forth a statement of intent.
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. The Authorities intend to work as closely as possible to provide assistance under this MoU where both are host-country Authorities.



8. The Authorities recognise that the provision of or request for information under this MoU may be denied on the grounds of national or public interest 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.
9. 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 A. 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

10. APRA and DNB 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.
11. An Authority may subsequently receive a request from a third party for confidential information provided under this MoU, 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.

12. 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 MoU 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

13. 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.
14. 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.



15. Where an Authority is considering an application for approval to establish a cross-border establishment(s) or make an acquisition(s) it may consult the other Authority if it is already a host-country Authority to the applicant entity.
16. 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.
17. 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

18. The Authorities intend to provide relevant information to their counterpart 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 law.
19. 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.



20. This MoU 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.

On-site Inspections

21. 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. The host-country Authority will assist the home-country Authority, as far as practicable, to conduct on-site inspections of authorised institutions in the host-country jurisdiction. Prior to deciding whether an on-site examination is necessary, the Authorities should review any relevant examination or other supervisory reports prepared by the other Authority.
22. 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 of the results of the inspections in a timely manner. If the parent institution has been examined along with its cross-border establishment in the host-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.
23. 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

24. The Authorities will co-operate as closely as reasonably possible, given their respective responsibilities, when they identify suspected financial crime activities in cross-border establishments. For the purposes of this MoU, financial crimes include money laundering, unauthorised banking, investment or insurance business and all other violations of the laws that the Authorities administer.

Ongoing Coordination

25. 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.
26. The Authorities will conduct meetings, 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. The Authorities also intend, where practical, to promote their co-operation by visits for informational purposes.
27. Unless otherwise decided, all communications between the Authorities will be between the principal contact persons set out in Annex A. This Annex may be amended by written notice from either Authority without the need to amend this MoU.

Costs

28. Each Authority shall independently bear the expenses incurred in the implementation of this MoU, unless a different procedure is agreed upon, for



example, where the cost of fulfilling a request is likely to be substantial or if a substantial imbalance has arisen in the cumulative costs incurred.

Terms and Modifications

29. This MoU 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 MoU prior to termination.

On behalf of:

The Australian Prudential
Regulation Authority

By _____

Dr John Laker
Chairman

De Nederlandsche
Bank NV

By _____

Dr Nout Wellink
President

By _____

Dirk Witteveen
Executive Director

Dated: 16 March 2006

Dated: 16 March 2006