

Memorandum of Understanding Concerning co-operation in banking supervision

between

The Australian Prudential Regulation Authority (APRA)

and

The National Bank of Cambodia (NBC)

(together “the Authorities”)

Background

1. This Memorandum of Understanding (MOU) sets out a framework for cooperation between the Authorities in areas of common interest where cooperation 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:

Banking includes entities regulated by APRA or by NBC which conduct banking business.

Cross-border Establishment means a branch, a subsidiary or any other banking entity or group within one jurisdiction which falls under the consolidated or group-wide supervision (or prospective supervision) responsibility of the other jurisdiction. 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 superannuation funds authorised to operate in Australia.
6. NBC is the national prudential regulator in Cambodia of banks which are legal entities licensed to carry out banking operations as their regular business (Commercial banks, Specialised banks, Microfinance Institutions and Microfinance Deposit Taking Institutions). NBC is also responsible for monetary policy in Cambodia. NBC was established on 23 December 1954 and operated under the *Law on the Change of Organisation and Conduct of NBC*. The main prudential functions of NBC are to license, de-license, regulate and supervise banks and financial institutions.

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 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 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.
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 who made the request expects that it will usually 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.
10. The Authorities expect each other to mark all documents received under this MOU, "CONFIDENTIAL - RECEIVED UNDER MEMORANDUM OF UNDERSTANDING BETWEEN APRA AND NBC".

Confidentiality

11. 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.
12. 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.
13. 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.
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 is expected to notify the other Authority. If the Authority providing the information 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 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 be kept confidential and not be further released without its consent.

Cross-Border Establishments

15. 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.
16. 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.
17. 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.

18. 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.
19. The Home-country Authority does not expect that it will be prevented 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 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

22. The Authorities intend to provide relevant information to each other with regard to its involvement in banking 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.
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. Cooperation in relation to anti-money laundering will be conducted in compliance with the relevant laws and regulations governing the Authorities.

Regulatory Policy Development

24. 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

25. 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.
26. Unless otherwise notified, contact will be between the principal contact persons set out in Annexure A.
27. 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.

On behalf of:

The Australian Prudential Regulation Authority

By


Dr John Laker
Chairman

Dated

16 May 2013

The National Bank of Cambodia

By


H.E. Neav Chanthana
Deputy Governor

Dated:

16 / 05 / 2013

On behalf of:

H.E. Dr Chea Chanto
Governor