

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY
AND THE
OFFICE OF THRIFT SUPERVISION, U.S.A.
CONCERNING MUTUAL COOPERATION

1. The Australian Prudential Regulation Authority (APRA) and the Office of Thrift Supervision (OTS) (collectively, the Authorities) have reached the following understanding to establish an arrangement for the sharing of information to facilitate the performance of their respective duties and to promote the safe and sound functioning of financial institutions or groups with cross-border establishments in their respective countries.

2. The Authorities express, through this understanding, 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. A cross-border establishment is defined as a branch, a subsidiary, an affiliate or any other entity of a financial institution or group supervised or prospectively supervised by one Authority (the host Authority), which gives rise to the need for consolidated or group wide supervision by the other Authority (the home Authority) (Annex A), as well as those where the Authorities are both host-country Authorities (no list will be maintained).

3. For the purposes of this Memorandum:

"financial institution or group" includes a banking entity or group and/or an insurance/reinsurance entity or group;

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

4. 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, superannuation funds and friendly societies authorised to operate in Australia.

5. The OTS was established in August 1989, as an independent bureau of the United States Department of Treasury. The Home Owners' Loan Act authorizes OTS to charter federal

savings associations, examine and regulate federal and state-chartered savings associations, and supervise their holding companies and other affiliates. The Director of OTS is nominated by the President, by and with the consent of the Senate, for a term of 5 years.

Scope and general principles

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

7. 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 financial institutions or groups, subject to domestic laws and the Authorities' policies.

8. The Authorities recognise the importance and desirability of mutual assistance and exchange of information. Information would be shared to the extent reasonable and subject to any relevant statutory provisions, including those restricting disclosure. In addition, the provision of or request for information under this Memorandum may be denied on the grounds of national interest or when disclosure would interfere with an ongoing investigation. Where a request for information is denied, or where information is not available under domestic law, the requested Authority will provide the reasons for not granting the request.

9. Requests for information will be made in writing by designated employees of the Authority and will be addressed to the requested Authority's contact persons (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.

Sharing of information

10. Information-sharing includes contact during the authorization and licensing process, in the supervision of the on-going activities of such entities and in the handling of problem institutions.

11. In connection with the authorization process:

- (a) the host Authority should notify the home Authority, without delay, of applications for approval to establish offices or make acquisitions in the host jurisdiction;
- (b) upon request, the home Authority should inform the host Authority whether the applicant financial institution or group is in substantial compliance with applicable laws and regulations and whether it may be expected, given its administrative structure and internal controls, to manage the cross-border establishment in an orderly manner. The home Authority should also, upon request, assist the host Authority with verifying or supplementing any information submitted by the applicant;
- (c) where an Authority is considering an application for approval to establish a cross-border establishment or make acquisition(s) it may consult the other Authority even if it is a host Authority to the applicant financial institution or group;
- (d) upon request, the home Authority should inform the host Authority about the nature of its regulatory system and the extent to which it will conduct consolidated or group wide supervision over the applicant financial institution or group. Similarly, the host Authority should inform the home Authority about the nature of its regulatory system and the extent to which it will supervise the cross-border establishment of the applicant financial institution or group; and

- (e) to the extent permitted by law, the Authorities should share information on the fitness and propriety of prospective directors, managers and controlling shareholders of a cross-border establishment, including where both are host Authorities.

12. In connection with the ongoing supervision of their cross-border establishments, the Authorities will endeavour to:

- (a) provide, as soon as reasonably possible, relevant information to their counterpart regarding material developments or material supervisory concerns in respect of the operations of a cross-border establishment;
- (b) respond to requests for information on their respective national regulatory systems and inform each other about major changes, in particular those which have a significant bearing on the activities of cross-border establishments;
- (c) inform, as soon as reasonably possible, their counterpart, of material administrative penalties imposed, or other formal enforcement action taken against a cross-border establishment. Prior notification shall be made, as far as practicable and subject to applicable laws; and
- (d) facilitate the transmission of any other relevant information that might be required to assist with the supervisory process. Such information will not normally include customer account information.

13. 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 12 USC 1818(v) in the USA.

On-site inspections

14. The Authorities recognise that cooperation is particularly useful in assisting each other in carrying out on-site inspections¹ of cross-border establishments. Prior to deciding whether an on-site inspection is necessary, each Authority should review any relevant examination or other supervisory reports made available by the other Authority. Each Authority should notify the other in advance of plans to examine a cross-border establishment or to appoint a third party to conduct an examination on its behalf in the other's jurisdiction, and to indicate the purposes and scope of the visit. Each Authority will allow the other Authority or its designated third party to conduct on-site inspections in its jurisdiction and reserves the right to accompany the other Authority. Following the inspection, an exchange of views should take place between the examination team and the Authority in whose jurisdiction the examination took place.

¹ The words "inspection" and "examination" are used here interchangeably.

Protection of information

15. The Authorities recognize that mutual trust can only be achieved if exchanges of information can flow with confidence in both directions. The Authorities agree to take all possible steps to preserve the confidentiality of the information received. In this regard, employees of both 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.

16. An Authority (the Receiving Authority) that has received confidential information from the other Authority (the Originating Authority) may subsequently receive a request or demand for that information from a third party, including a third party supervisory authority. In the event of such a request or demand, the Receiving Authority shall promptly notify the Originating Authority. Except as otherwise provided in this Memorandum, the Receiving Authority shall not release or disclose confidential information to a third party without the agreement of the Originating Authority, which may attach conditions to the disclosure of information, including that the third party recipient be bound to hold the information confidential.

17. In the event that the Receiving 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, this Authority will, unless prohibited by law, promptly notify the Originating Authority, indicating what information it is compelled to release and the circumstances surrounding its release. If so required by the Originating Authority, the Receiving Authority will use its best endeavours to preserve the confidentiality of the information to the extent permitted by law. The Authorities will inform one another of the circumstances in which they may be subject to legal compulsion to release information obtained.

Financial crime

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

Ongoing coordination

19. The Authorities will endeavour to promote their cooperation through visits for information purposes. In addition, the Authorities agree to pursue areas where the training of staff at either Authority would benefit from input and support by the other Authority in order to reinforce sound banking and insurance supervisory practices in both countries.

20. The Authorities will conduct meetings, as often as appropriate, to discuss issues concerning financial institutions or groups that maintain cross-border establishments in the respective countries, and to review the effectiveness of cooperation arrangements.

21. Annex A and Annex B to this document will be reviewed at least annually and reconfirmed or amended as necessary to ensure that the information therein remains current.

General provisions

22. By executing this Memorandum neither party waives any immunity from suit to which it is entitled nor submits to the jurisdiction of any court of competent jurisdiction.

23. This Memorandum is a statement of intent and does not create any legally binding obligations on either party.

24. The Authority from whom assistance is sought may, as a condition of agreeing to give assistance under this Memorandum, require the other Authority to make a contribution to costs. Such a contribution may, in particular, be required if the cost of fulfilling a request is likely to be substantial or if a substantial imbalance has arisen in the cumulative costs incurred.

25. This Memorandum is to continue in effect for a period of one year from the latest date entered below and will automatically be renewed each year subject to modification by the mutual consent of the Authorities, provided however, that the provisions set forth under the headings "Protection of information" and "General provisions" are to continue with respect to any information provided or actions taken under this Memorandum prior to its termination.

26. This Memorandum may be terminated by one of the Authorities giving 30 days notice to the other Authority that the terms set out herein are no longer to have effect, provided however, that the provisions set forth shall not terminate with respect to any information provided or actions taken under the Memorandum prior to its termination.

On behalf of:

The Australian Prudential Regulation Authority

By: 

Dated: 27 July 2005

Dr John Laker
Chairman

The Office of the Thrift Supervision

By: 

Dated: 9-August-2005

Scott M. Albinson
Managing Director, Examinations,
Supervision, and Consumer Protection

Annex A
List of Cross-border Establishments
(at July 2005)

AIG Group
GE Group