

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS CANADA

AND THE

BANKING, FINANCE AND INSURANCE COMMISSION

CONCERNING MUTUAL COOPERATION

1. The Office of the Superintendent of Financial Institutions Canada (OSFI) and the Banking, Finance and Insurance Commission (CBFA) (collectively, the Authorities) have reached the following understanding in order 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 banks and insurance companies with cross-border establishments in their respective countries (hereafter referred to as “financial institutions”).

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 or any other entity of a bank or insurance company 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).

The Authorities

3. The OSFI was established in July 1987 by the Office of the Superintendent of Financial Institutions Act (OSFI Act). Under this Act, the OSFI is responsible for regulating and supervising all federally chartered, licensed or registered banks, insurance, trust and loan companies, cooperative credit associations and fraternal benefit societies in Canada. The Superintendent reports to the Minister of Finance.

4. The CBFA is an autonomous public institution which has its own legal personality. According to the Law of 9 July 1975, the Law of 22 March 1993, the Law of 2 August 2002, and the Law of 11 January 1993, the Banking, Finance and Insurance Commission is entrusted with the prudential supervision of credit institutions (herein referred to as “banks”) and insurance companies and with the supervision of compliance by said institutions with anti-money laundering legislation.

Scope and General Principles

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

6. The Authorities will, within the framework of this Memorandum of Understanding, provide each other with the fullest assistance possible to promote the safe and sound functioning of financial institutions.

7. 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 understanding 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.

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 (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. The request for information should indicate the sensitivity of the information contained in the request. The request should also indicate the urgency of the request, or the desired time period for the reply.

Sharing of information

9. Information-sharing includes contact during the authorisation and licensing process, in the supervision of the on-going activities of financial institutions and in the handling of problem institutions.

10. In connection with the licensing process and with the process of authorisation of acquisition:

- (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 bank or insurance company 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) 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 bank or insurance company. 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 institution and

- (d) to the extent permitted by law, the home and host Authorities should share information on the fitness and properness of prospective managers of a cross-border establishment.

11. In connection with the ongoing supervision of their cross-border establishments, the Authorities intend to:

- (a) provide relevant information to their counterpart regarding material developments or 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 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. Furthermore, the Authorities agree to collaborate, where appropriate, in cases where supervisory corrective measures are taken against a cross-border establishment and
- (d) facilitate the transmission of any other relevant information that might be required to assist with the supervisory process.

On-site inspections

12. The Authorities recognise that cooperation is particularly useful in assisting each other in carrying out on-site inspections¹ of cross-border establishments in the host country. Prior to deciding whether an on-site inspection is necessary, the home Authority may review any relevant examination reports prepared by the host Authority. The home Authority should undertake to notify the host 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 visit. The host Authority will allow the home Authority to conduct on-site inspections. As may be mutually agreed between the parties, examinations may be carried out by the home Authority alone, or accompanied by the host Authority. Following the inspection, an exchange of views should take place between the examination team and the Host authority.

Protection of information

13. 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. The materials provided pursuant to this

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

Memorandum of Understanding and containing information covered by professional secrecy shall be marked with the following clause solely: Covered by professional secrecy.

14. An Authority that has received confidential information from the other Authority may subsequently receive a request (not legally enforceable) for that information from 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 Authority will consult with and obtain agreement from the Authority that originated the information, who may attach conditions to the release of information, including that the third party recipient be bound to hold the information confidential.

15. 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 understanding, this Authority will 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 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.

16. Notwithstanding Section 15, the Authorities acknowledge that confidential information, including information they receive from each other, may be required by legislation to be passed to related government agencies set out in Annex B to this document, and confirm that in their respective jurisdictions these agencies are required by legislation to maintain the confidentiality of such information.

Financial Crime

17. The Authorities intend to co-operate closely when they identify suspected financial crime activities in supervised banks, insurance companies and financial transactions. For the purposes of this agreement, financial crimes are in particular: money laundering, unauthorised banking, investment or insurance business and all other violations of law on financial markets.

Ongoing Coordination

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

19. The Authorities will conduct meetings as often as appropriate to discuss issues concerning banks and insurance companies that maintain cross-border establishments in the respective countries, and to review the effectiveness of cooperation arrangements.

Modifications and Term

20. This understanding shall continue indefinitely subject to modification by the mutual consent of the Authorities or termination by either party with 30 days advance notice in writing. After termination, the confidentiality provisions shall continue to apply to any information provided under this understanding prior to termination.

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

On behalf of:

The Banking, Finance and Insurance Commission

By:



Dated:

Eddy Wymeersch, Chairman

The Office of the Superintendent of Financial Institutions Canada

By:



Dated:

Robert Hanna, Acting Assistant Superintendent, Regulation Sector

Annexes

A – Contact Persons

B – Related Government Agencies