



South African Reserve Bank



APRA

**MEMORANDUM OF UNDERSTANDING**  
between  
**THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY**  
and  
**THE BANK SUPERVISION DEPARTMENT**  
**OF THE SOUTH AFRICAN RESERVE BANK**

**SINCE** the Australian Prudential Regulation Authority ("APRA") and the Bank Supervision Department of the South African Reserve Bank (the "BSD") (hereinafter refer to as the "Authorities") are willing to cooperate, on the basis of mutual trust and understanding, in the field of supervising authorised banking entities or groups;

**AND SINCE** banking entities or groups in Australia and the Republic of South Africa ("RSA") have, or may in the future have, operations in each of the respective jurisdictions,

the Authorities have reached the following understanding to share supervisory information in order to assist each other in the performance of their respective functions and duties.

**1. MEANING OF WORDS AND EXPRESSIONS**

In this Memorandum:

- 1.1 **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.
- 1.2 **Cross-border establishment** means a branch, subsidiary or any other banking entity or group within one jurisdiction which falls under the consolidated or group-wide banking supervision (or prospective supervision) responsibility of the other jurisdiction (listed in Annexure A). Cross-border establishments include those where APRA and the BSD are both host-country Authorities (no list of these entities will be maintained).

**2. THE MEMORANDUM**

This Memorandum of Understanding does not create any binding legal obligations upon the Authorities. Nothing in this Memorandum legally requires either of the Authorities to provide information or assistance to the other.

### 3. SCOPE

This Memorandum describes a non-binding framework for the Authorities to exchange information and to co-operate with each other regarding the supervision and regulation of financial institutions and groups under their authority.

### 4. CONSULTATION

The Authorities will regularly review this Memorandum and will consult when necessary with a view to improving its operation and resolving any matters.

### 5. SHARING OF INFORMATION

5.1 APRA will use its best endeavours to notify the BSD and provide relevant information regarding a material supervisory concern that it may have in respect of:

- 5.1.1 a RSA banking entity or group or branch, agency or representative office or subsidiary operating in Australia;
- 5.1.2 banking entities or groups where both the BSD and APRA are host-country Authorities.

5.2 The BSD will use its best endeavours to notify APRA and provide relevant information regarding a material supervisory concern that it may have in respect of:

- 5.2.1 an Australian banking entity or group or branch, agency or representative office or subsidiary operating in the RSA;
- 5.2.2 banking entities or groups where both the BSD and APRA are host-country Authorities.

5.3 The term "material supervisory concern" encompasses a matter relating to:

- 5.3.1 whether or not the operations of a banking entity or group are conducted in a safe and sound manner and whether or not it complies substantially with applicable prudential requirements;
- 5.3.2 whether or not there has been evidence of a violation of any law that is of such a nature as potentially to materially affect the operations of a banking entity or group; or
- 5.3.3 any activity, action, conduct, omission or event that could have a material adverse effect on the financial stability of the banking entity or group.

5.4 The provision of, or a request for, information under this Memorandum may be denied (the following list is not exhaustive):

- 5.4.1 if compliance would result in APRA or the BSD contravening any applicable law or any agreement entered into;



- 5.4.2 on the grounds of public interest or national security; or
- 5.4.3 when compliance with a request or provision of information would prejudice an ongoing investigation and such prejudice is likely to outweigh the adverse effects of denying the information.

## 6. FORMAT OF REQUEST

- 6.1 To enable the Authorities to effectively co-operate, each Authority will:
  - 6.1.1 Nominate at least one person from within their organisation to act as a contact person for the purposes of this Memorandum;
  - 6.1.2 List the names and contact details of each contact person in Annexure B of this Memorandum;
  - 6.1.3 Give the other party notice of a change in the name and/or contact details of the contact person;
  - 6.1.4 Describe as accurately as possible, the information and/or assistance they require and the purpose of the request;
  - 6.1.5 Endeavour to provide the information and/or assistance as requested and indicate what, if any, conditions are to attach to the disclosure;
  - 6.1.6 Indicate the sensitivity and confidentiality of information required and to whom such information may be disclosed;
  - 6.1.7 Indicate whether the disclosure of such required information to third parties would be necessary;
  - 6.1.8 Indicate the time period in which the party requires the information and/or assistance; and
  - 6.1.9 Indicate in what format the information is required taking into account the confidentiality provisions contained in this Memorandum.
- 6.2 Requests for assistance will be made in writing and be addressed to the requested Authority's contact persons in Annexure 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.

## 7. LICENSING / AUTHORISATIONS

- 7.1 If a banking entity based in one of the two jurisdictions applies to the Authority of the other jurisdiction to establish a branch or subsidiary, the host-country Authority intends, to the extent permitted by law, to inform the home-country Authority of the application without delay. If the adequacy of home supervision is a statutory prerequisite which the

host-country Authority needs to address in the licensing procedure, it would contact the home-country authority to settle any question in this regard.

- 7.2 Upon request, the home-country Authority intends, to the extent permitted by law, to inform the host-country Authority of the amount of own funds/capital and reserves and the solvency ratio of the parent institution, and whether it is fully subject to and complies with the domestic banking regulation, and whether it is expected in the light of its administrative structure and internal controls to operate and manage the proposed cross-border establishment in an orderly, proper and prudent manner.
- 7.3 The home-country Authority intends, to the extent permitted by law, to disclose any available information to the host-country Authority regarding the fitness and propriety of the prospective managers of a cross-border or proposed cross-border establishment.

## 8. ONGOING SUPERVISION

- 8.1 The BSD and APRA will endeavour, to the extent permitted by law, to inform each other, in a timely manner and to the extent reasonable, about any event which has the potential to endanger the stability of banking entities or groups having cross-border establishments in the respective other jurisdiction.

The Authorities will also endeavour, to the extent permitted by law, to notify each other of administrative penalties which they have imposed or any other action which they have taken in respect of such a cross-border establishment as host supervisor or on the parent institution as home supervisor if the information in their judgment is likely to be important to the other Authority to assist that other Authority in the exercise of its functions.

- 8.2 The BSD and APRA intend, to the extent permitted by law, to discuss with each other any significant information on banking entities or groups having cross-border establishments in the other jurisdiction which is likely to be relevant to the other Authority to assist that other Authority in the exercise of its functions. Relevant matters are in particular: concerns about the continued financial soundness of an authorised entity or group (failure to meet capital adequacy or other financial requirements, significant losses, rapid decline in profits or a deterioration in profitability), material concerns relating to compliance or control procedures, material concerns arising from supervisory visits, prudential interviews/reviews or reports from and communications with an authorised entity or group or other regulatory body (subject to obtaining any necessary consent from any such regulatory body), material concerns arising from late or inaccurate prudential returns and material concerns relating to supervisory arrangements in third countries (subject to obtaining any necessary consent from any relevant third country regulatory body).



- 8.3 Representatives of the BSD and APRA will endeavour to convene ad-hoc meetings to promote the resolution of supervisory problems concerning a cross-border establishment in the respective other jurisdiction, whenever either side reasonably requests on the basis that it has a material supervisory concern.
- 8.4 The Authorities, either upon request or at such other times as they may decide, will endeavour to share:
  - 8.4.1 information regarding the extent and nature of each other's supervision on a consolidated basis of banking entities or groups with operations in the other jurisdiction;
  - 8.4.2 information regarding material changes or developments in each other's supervisory regime; and
  - 8.4.3 information that may assist each other in the performance of their functions or improve their efficiency.

## 9. FINANCIAL CRIME

The Authorities intend, to the extent permitted by law and to the extent such information is available, given their respective responsibilities, to co-operate closely when they identify suspected financial crime activities in supervised banking entities or groups.

For the purposes of this Memorandum, financial crime includes: unauthorised banking and financial services business and all other violations of law governing financial markets. The Authorities will endeavour to share information on financial crime concerning the respective banking entities or groups which carry out cross-border activities in each other's jurisdiction or which could affect each other's jurisdiction. They may pass on this information, with prior written consent received from the other Authority and subject to any conditions which may be attached to that consent, for regulatory or law enforcement purposes to the relevant regulatory or law enforcement authorities in their jurisdiction.

## 10. CRISIS SITUATIONS

The BSD and APRA intend to inform each other without delay if they learn of an incipient crisis relating to any entity that may have a material impact on a cross border banking entity or group supervised by either Authority.

## 11. ON-SITE INSPECTIONS AND AUDITS

- 11.1 The Authorities are aware that co-operation is particularly useful in assisting each other in carrying out on-site inspections of cross-border establishments. The BSD will allow APRA or the auditors commissioned by it, to carry out inspections of branches and subsidiaries of Australian banking entities or groups in the RSA. In return, APRA will co-operate, where appropriate, with the BSD or the auditors commissioned by it, to

carry out inspections of branches and subsidiaries of RSA banking entities or groups in Australia.

- 11.2 The Authorities will notify each other in advance of any inspection in the host country, giving details of the names of the examiners, the purpose of the audit and its expected duration. The Authorities intend to assist each other to accompany any such on-site inspection carried out either by the Authorities themselves or the auditors commissioned by the Authorities. The Authorities will keep each other informed on the results of the inspections, if of interest to the host-country supervisor, to the extent reasonable and permitted by law and in a timely manner. If the parent institution has been audited along with its cross-border establishment in the other jurisdiction, the home-country Authority will endeavour to provide the host-country Authority with a summary report on the findings which are relevant to the cross-border establishment and which will assist the host-country Authority in exercising its functions.

## **12. PERIODIC MEETINGS AND ONGOING CONTACT**

Representatives of APRA and the BSD will endeavour to meet, as required, to discuss general supervisory developments as well as issues concerning banking entities or groups that maintain operations in both Australia and the RSA.

## **13. CONFIDENTIALITY AND USE OF INFORMATION**

- 13.1 Any confidential information shared pursuant to this Memorandum is to be used only for lawful supervisory purposes.
- 13.2 To the extent permitted by law, the Authorities will maintain the confidentiality of all information received through these arrangements and will not disclose any such information without first obtaining the prior written consent of the other Authority, and other than in accordance with the conditions (if any) attached by the providing Authority and as necessary for carrying out their lawful supervisory responsibilities.
- 13.3 To the extent permitted by law, where one Authority proposes to take action on the basis of confidential information received from the other Authority, it will consult with that other Authority to the extent practicable before taking such action.
- 13.4 Subject to paragraphs 13.1 and 13.2, where an Authority receives a request from a third party for confidential information provided pursuant to this Memorandum, that Authority will promptly notify the Authority that provided the information, will solicit the providing Authority's views as to the propriety of releasing such information to the third party and if necessary, will cooperate in seeking to preserve confidentiality over the information.



- 13.5 Subject to paragraphs 13.1 and 13.2, if an Authority is legally compelled to disclose information that has been provided under this Memorandum, that 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 required by the providing Authority, the other Authority will use its best endeavours to preserve confidentiality of the information to the extent permitted by law.
- 13.6 All documents and the information provided pursuant to this Memorandum will remain the property of the Authority providing such information.
- 13.7 The Authorities, in providing written materials pursuant to this Memorandum, should mark every document of the material provided with a legend reading substantially as follows:

**"Confidential - provided pursuant to the Bank Supervision Department of the South African Reserve Bank/ Australian Prudential Supervisory Authority Memorandum of Understanding"**

#### **14. GENERAL**

- 14.1 By signing or acting under this Memorandum, neither Authority waives any immunity from suit or privilege to which it may be entitled nor submits to the jurisdiction of any court that would not have been a court of competent jurisdiction if this Memorandum had not been signed.
- 14.2 No provision of this Memorandum entitles any person, entity or governmental authority, directly or indirectly, to obtain any information or to challenge the sharing of information under this Memorandum.
- 14.3 Any revision or amendment of this Memorandum shall only become valid after such revision or amendment was accepted in writing by both Authorities.
- 14.4 If an Authority wishes to withdraw from, or end, this Memorandum that Authority will notify the other of its intention in writing. Any information provided or actions taken under Memorandum shall remain subjected to the provisions as set out herein.

CONFIRMED:

FOR:  
The Bank Supervision Department  
of the South African Reserve Bank



Registrar of Banks  
Errol Melville Kruger

Dated: 4 JULY 2007

FOR:  
Australian Prudential Regulation  
Authority



Chairman  
Dr John Laker

Dated: 29 June 2007



**Annexure A:**

**List of Cross-border Establishments (excluding those where APRA and BSD are both host-country Authorities)**

**Investec Group**