

**MEMORANDUM OF UNDERSTANDING BETWEEN THE EUROPEAN CENTRAL BANK
AND THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY**

This Memorandum of Understanding is made BETWEEN

The Australian Prudential Regulation Authority, with its headquarters at Level 12, 1 Martin Place, Sydney 2000, New South Wales, Australia.

hereinafter 'APRA',

AND

The European Central Bank, with its headquarters at Sonnemannstrasse 20, 60314 Frankfurt am Main, Germany,

hereinafter the 'ECB',

(hereinafter jointly 'the Authorities' and each of them, individually, 'the Authority')

WHEREAS:

- (1) Council Regulation (EU) No 1024/2013¹ (hereinafter the 'SSM Regulation') confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions. This Memorandum of Understanding covers the supervisory tasks conferred on the ECB by Article 4, read in conjunction with Article 6(4), of the SSM Regulation. Cooperation under this Memorandum of Understanding is without prejudice to the national competent authorities' (NCAs) tasks and responsibilities under European Union

¹ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

and national laws, as well as Memoranda of Understanding they are party to (or will become party to) for the performance of their tasks.

- (2) Article 6 of the SSM Regulation lays down the criteria for identifying the entities supervised by the ECB². The methodology for assessing these criteria is laid down in Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)³ (hereinafter the 'SSM Framework Regulation'), in particular its Articles 39 to 72.
- (3) The ECB enters into this Memorandum of Understanding having regard to Article 55 of Directive 2013/36/EU of the European Parliament and of the Council (hereinafter 'the CRD')⁴ and Article 8 of the SSM Regulation.
- (4) APRA is the national prudential regulator in Australia, established on 1 July 1997 under the Australian Prudential Regulation Act 1998⁵ (hereinafter 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.
- (5) APRA enters into this Memorandum of Understanding on the basis of section 11 of the APRA Act.
- (6) Through this Memorandum of Understanding, the ECB and APRA express their willingness to cooperate with each other on the basis of mutual trust and understanding for the purpose of performing their supervisory tasks in respect of cross-border banking and credit institutions that fall within their supervisory responsibilities under the SSM Regulation and the APRA Act.
- (7) In order to allow for smooth communication between them, the Authorities will nominate contact persons who represent them in the activities covered by the present Memorandum of Understanding (see the list of contact persons in the Annex).

THE AUTHORITIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

² An up-to-date list of significant credit institutions and less significant credit institutions is published on the ECB's website at <https://www.bankingsupervision.europa.eu/banking/list/who/html/index.en.html>

³ Regulation (EU) No 468/2014 of the European Central Bank of 16 April establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

⁴ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338). Pursuant to Article 55 of the CRD, a condition for the ECB to enter into agreements with third country authorities is that their confidentiality regime is equivalent to that in place in the European Union.

⁵ Australian Prudential Regulation Authority Act 1998 (Cth).

DEFINITIONS⁶

For the purpose of this Memorandum of Understanding:

- 'supervised entities' means entities that fall within the supervisory remit of the Authorities, as identified by their respective legislation, including their cross-border establishments⁷;
- 'Authority' means any of the signatories of this Memorandum of Understanding, together also referred to as 'Authorities';
- 'cross-border establishment' means a branch, a subsidiary or any other entity of a supervised entity operating or localised within one jurisdiction, and over which the Authority in the other jurisdiction exercises supervisory responsibilities;
- 'participating Member State' means a Member State of the European Union whose currency is the euro, or a Member State whose currency is not the euro which has established a close cooperation in accordance with Article 7 of the SSM Regulation;
- 'authorisation process' means the process pursuant to which a supervised entity is permitted to perform its activities⁸;
- 'qualifying holding assessment' means the assessment that the Authorities are required to perform, in applying their respective legislation, in respect of purchases of, or variations in, holdings in a supervised entity, whether intended or accomplished and in whatever form⁹;
- 'assessment of directors' means the assessment that the Authorities are required to perform, when applying their respective legislation, in respect of those who direct the business of a supervised entity¹⁰;
- 'requested Authority' means the Authority to which a request is addressed to under this Memorandum of Understanding;
- 'requesting Authority' means the Authority making a request under this Memorandum of Understanding;

⁶ The Authorities recognise that, while they may define terms differently in their laws, regulations and requirements, requests for assistance will not be denied solely on the grounds of differences in the definitions used by the requesting and requested Authorities.

⁷ For the ECB, the term may refer to credit institutions, financial holding companies and mixed financial holding companies as defined in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁸ For the ECB, the legal reference is Article 4(1)(a) of the SSM Regulation, read together with Article 8 et seq. of the CRD.

⁹ For the ECB, the legal reference is Article 4(1)(c) of the SSM Regulation, read together with Article 22 et seq. of the CRD.

¹⁰ For the ECB, the legal reference is Article 4(1)(e) of the SSM Regulation, read together with Articles 91 and 121 of the CRD.

- 'laws, regulations and requirements' means the provisions of the laws, or the regulations and requirements promulgated thereunder, of Australia and of the European Union in relation to the prudential supervision of the supervised entities;
- 'jurisdiction' means the territory of the country concerned under this Memorandum of Understanding, for the purposes of which each of the territories of the participating Member States is considered to be an ECB jurisdiction;
- 'National competent authority' (NCA) means a national competent authority as defined in point (2) of Article 2 of the SSM Regulation. In accordance with point (9) of Article 2 of the SSM Framework Regulation, this definition is without prejudice to arrangements under national law which assign certain supervisory tasks to a national central bank (NCB) not designated as an NCA. In this case, the NCB will carry out these supervisory tasks within the framework set out in national law and the SSM Framework Regulation. A reference to an NCA shall apply, as appropriate, to the NCB for the supervisory tasks assigned to it by national law.

Article 1

Purpose and general principles

1. The purpose of this Memorandum of Understanding is to formalise cooperation and information-sharing mechanisms between the ECB and APRA in relation to the supervised entities. Such cooperation is essential in order to promote the safety and soundness of the supervised entities and the stability of the financial system.
2. This Memorandum of Understanding is aimed at ensuring the effective exchange of supervisory information for the performance of the Authorities' respective supervisory powers over supervised entities, to the extent permitted by law, and in accordance with the Core Principles for Effective Banking Supervision developed by the Basel Committee on Banking Supervision¹¹.
3. The Authorities recognise that cooperation under this Memorandum of Understanding may be denied on the grounds of laws, regulations and requirements, or public interest, as well as where it would interfere with an ongoing investigation or jeopardise the proper performance of the tasks of the Authorities.

Article 2

Principles regarding the exchange of information

1. Each Authority will endeavour to provide the other Authority, on a timely basis upon request or on its own initiative, where appropriate and insofar as feasible, with any information that is necessary for the exercise of the other Authority's supervisory tasks.
2. A request for information will include the following:

¹¹ Available on the Bank for International Settlements' website at www.bis.org.

- (a) a description of the facts underlying the request, and its purpose;
 - (b) the reasons why the information is likely to be relevant for the proper performance of the requesting Authority's tasks, and in the light of the requesting Authority's legislation, including a specification of the supervisory tasks that are connected with the subject matter of the request;
 - (c) any information known to, or in the possession of, the requesting Authority that might assist the requested Authority in fulfilling the request.
3. Where a request for information is denied or the information requested is not available, the requested Authority will provide the reasons for not sharing the information.
 4. The exchange of information will be conducted in writing, regardless of its format (paper, electronic communication or other). Both the request for information and the communication of the requested information will be addressed between the Authorities primarily through the designated contact persons (see list of contact persons in the Annex). In urgent circumstances, requests may be made by telephone, provided that they are subsequently confirmed in writing within 10 working days.

Article 3 **Confidentiality**

1. The Authorities will endeavour to preserve the confidentiality of the information received to the extent permitted by laws, regulations and requirements. In this regard, each Authority will hold confidential all information received from the other Authority. Any confidential information received by the requesting Authority from the requested Authority will be used exclusively for lawful supervisory purposes, and will not be disclosed except as set out below.
2. The Authorities will endeavour to ensure that all persons¹² dealing with, or having access to confidential information (including members of the Authority, employees, external providers having access to confidential information) are bound by the obligations of professional secrecy in compliance with the relevant laws, regulations and requirements.
3. Either Authority may be requested by a third party to disclose confidential information received under this Memorandum of Understanding, or alternatively, may consider it appropriate to disclose confidential information to a third party, including a supervisory authority that might have a legitimate interest in such information. The prior consent of the requested Authority will be sought and obtained in writing by the requesting

¹² For the purposes of the information sharing provisions of this Memorandum of Understanding, the Authorities acknowledge that: (a) staff from the NCAs performing activities related to the application and execution of ECB supervisory tasks within the Single Supervisory Mechanism (SSM); or (b) staff from the NCBs and NCAs acting in an official capacity as a member of the ECB Governing Council or the SSM Supervisory Board on matters relating to prudential banking supervision will be treated as staff members of the ECB and will be subject to the confidentiality provisions of this Memorandum of Understanding.

Authority before any disclosure to a third party of confidential information exchanged under this Memorandum of Understanding may occur. The requested Authority may deny disclosure or impose conditions on the disclosure, including that the third party will keep the information confidential.

4. Where required under a legal obligation to disclose confidential information received pursuant to this Memorandum of Understanding, the requesting Authority will, to the extent permitted by law, inform the requested Authority about the purposes for which the information it provided is proposed to be shared, the uses that the third party could make of the information and the safeguards that the third party would apply to ensure confidentiality. Where the requested Authority does not consent to the disclosure to a third party, and where possible and appropriate, the requesting Authority will take reasonable steps to resist disclosure, including by employing legal means to challenge the request for disclosure or by advising the third party of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Authorities.

Article 4

Cooperation in relation to the ongoing supervision

1. Each Authority will use its best endeavours to provide, upon prior request, or on its own initiative where appropriate, the other Authority with any information that is likely to be of assistance to it in order to promote the safe and sound functioning of supervised entities.
2. Each Authority will provide relevant information to the other in a timely manner, in particular following the occurrence of any event that has the potential to have a material adverse impact on the operations of a cross-border credit institution in the other Authority's jurisdiction.
3. The information mentioned under this Article will be provided insofar as practicable and subject to the applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 5

Ongoing coordination/cooperation

1. The Authorities will conduct meetings, as appropriate, to discuss issues concerning supervised entities that maintain cross-border establishments in their respective jurisdictions, and to review the effectiveness of this Memorandum of Understanding. The Authorities also intend, where practicable, to promote their cooperation by means of visits for informational purposes.
2. To the extent possible, the Authorities will conduct their communication via the designated contact persons listed in the Annex. This Annex may be amended by

written notice from either Authority without the need to amend this Memorandum of Understanding.

3. The information mentioned under this Article will be provided insofar as practicable and subject to the applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 6

Cooperation in relation to authorisation procedures, qualifying holdings assessments and the assessment of directors

1. The Authorities will endeavour to notify each other, in a timely manner, of applications for approval to establish cross-border establishments or make acquisitions.
2. Upon request, the Authorities will inform each other on whether an applicant is in substantial compliance with the applicable laws and regulations and whether it may be expected, in the light of its administrative structure and internal controls where relevant, to manage the supervised entity or the cross-border establishment in an orderly manner. The Authorities will also, upon request, assist each other with verifying or supplementing any information submitted by an applicant.
3. Upon request, the Authorities will inform each other about the nature of its supervisory system and the extent to which it will conduct supervision, including consolidated or group-wide, of an applicant.
4. Upon request, and where available, the Authorities will endeavour to supply each other with information on proposed acquirers.
5. To the extent permitted by their respective laws and regulations, the Authorities will share information on the fitness and propriety of prospective directors and managers of a cross-border establishment.

Article 7

Breach reporting mechanism

The Authorities may share the information at their disposal received via their breach reporting mechanism in relation to supervised entities, if such exchange of information is necessary and proportionate. An exchange of information in this regard will be subject to any relevant statutory provisions, including those restricting disclosure, and the terms of this Memorandum of Understanding.

Article 8

Cooperation in relation to enforcement and sanctions

1. Upon request, each Authority will inform the other of non-public administrative pecuniary penalties, enforcement or sanction decisions in respect of a cross-border establishment or in respect of supervised entities insofar as it relates to the operation of cross-border establishments in that jurisdiction¹³.
2. The information referred to in Article 8(1) will be given as far as practicable and subject to the applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 9

Cooperation in relation to on-site inspections

1. The Authorities will assist each other as far as practicable with the conduct of on-site inspections of cross-border establishments situated in the other Authority's jurisdiction. Where assistance cannot be provided, the Authority requested to provide assistance will notify it to the other Authority as soon as deemed practical.
2. The Authorities will duly notify each other of plans to inspect a cross-border establishment, or to appoint a third party to conduct an inspection on its behalf in advance, and will do so at least one month in advance for non-urgent missions. This notification will detail the purposes, scope, expected starting and ending dates of the inspection, the cross-border establishment to be inspected, and the names of the persons leading the inspection. The Authorities reserve the right to accompany each other's inspections team on such an inspection. On conclusion of the inspection of the cross-border establishment, the Authority performing the inspection will present the other Authority with the relevant findings, and/or provide it with the relevant sections of the on-site inspection report within a reasonable timeframe.
3. The information mentioned under this Article will be provided insofar as practicable and subject to the applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 10

Cooperation in relation to internal models or advanced approaches

The Authorities agree that cooperation, including confidential information exchange, is useful to achieve a deeper understanding of the implementation of the internal models used for regulatory purposes in the supervised entities. In this regard, the Authorities will endeavour in particular to exchange views and confidential information on request: (a) on the role that these tools have in the supervised entity's decision-making process; (b) on the data and IT framework in place to ensure that all relevant confidential information is properly reflected in

¹³ For the requests addressed to the ECB, this means that the ECB may only share information related to administrative pecuniary penalties imposed pursuant to Article 18(1) of the SSM Regulation, and sanctions imposed pursuant to Article 18(7) of the SSM Regulation.

the internal models; (c) on the internal controls and internal governance that apply at both the individual and consolidated level for the range of business performed in the respective jurisdiction; and (d) on compliance with all of the requirements applicable to internal models for prudential banking supervisory purposes.

Article 11

Cooperation in relation to emergency situations

1. The Authorities will inform each other promptly if they become aware of an emerging crisis such as, but not limited to, serious financial difficulties which might have an adverse impact on operations relating to any supervised entity in the respective jurisdictions of the Authorities.
2. To the extent possible, the Authorities will endeavour to seek coordinated responses to any crisis emerging in a cross-border establishment operating in their respective jurisdictions, in accordance with the applicable legislation and without prejudice to their respective involvement in the relevant cross-border cooperation fora.

Article 12

Status of this Memorandum of Understanding

1. This Memorandum of Understanding sets forth a statement of intent and does not modify or supersede any laws, regulations and requirements in force in, or applying to, Australia or the European Union, or any of the Member States of the European Union or Australia's constituent states and territories. Nor does this Memorandum of Understanding create any directly or indirectly enforceable rights or legally binding obligations for the Authorities or any third party.
2. This Memorandum of Understanding is without prejudice to other cooperation arrangements that each Authority might conclude, and can be supplemented with other more specific memoranda of understanding between the same Authorities agreed upon for the purpose of cooperating for the supervision of a specific cross-border establishment.
3. The Authorities will use their best endeavours in the performance of this Memorandum of Understanding. However, neither the Authorities nor any third party can bear or seek any liability regarding the performance of this Memorandum of Understanding.
4. Any disagreement arising from the interpretation or the performance of this Memorandum of Understanding will be amicably settled by means of consultations between the Authorities.
5. Any amendment to this Memorandum of Understanding, including this Article, will be made by the Authorities' mutual consent and formulated in English and have effect only if executed by the Authorities in writing.

6. This Memorandum of Understanding will come into effect once signed by both Authorities and will continue indefinitely, subject to modification by mutual consent of the Authorities or termination by either Authority with 30 days prior notice to the other Authority.
7. In the event of termination of this Memorandum of Understanding, the information obtained hereunder will continue to be treated in accordance with the confidentiality regime in Article 3.

Article 13
Publication

Once this Memorandum of Understanding has come into effect, the Authorities agree that it may be made publicly available in full or in part, excluding the list of contact persons in the Annex, by either of the Authorities through posting on their websites.

For the Australian Prudential
Regulation Authority

14 December 2021

Sydney

Signature

Wayne Byres

Chair

For the European Central Bank

14 December 2021

Frankfurt am Main

Signature

Andrea Enria

Chair of the Supervisory Board of the ECB

For the European Central Bank

14 December 2021

Frankfurt am Main

Signature

Frank Elderson

Vice-Chair of the Supervisory Board of the
ECB

