

Memorandum of Understanding

In view of the fact that a number of banks incorporated in Australia have branches or subsidiaries in New Zealand, the Australian Prudential Regulation Authority and the Reserve Bank of New Zealand have reached the following understanding in order to establish an arrangement for the sharing of supervisory information to facilitate the performance of their respective duties.

Sharing of Information

1. The Reserve Bank of New Zealand will endeavour to notify the Australian Prudential Regulation Authority and provide relevant information regarding a material supervisory concern that it may have in respect of:
 - (a) an Australian authorised bank or any of its New Zealand branches, agencies, representative offices or subsidiaries; and
 - (b) the Australian branches, agencies, representative offices or subsidiaries of a New Zealand registered bank.
2. The Australian Prudential Regulation Authority will endeavour to notify the Reserve Bank of New Zealand and provide relevant information regarding a material supervisory concern that it may have in respect of:
 - (a) a New Zealand registered bank or any of its Australian branches, agencies, representative offices or subsidiaries; and
 - (b) the New Zealand branches, agencies, representative offices or subsidiaries of an Australian authorised bank.
3. The term “material supervisory concern” encompasses any matter relating to:
 - (a) whether the operations of a bank are conducted in a safe and sound manner and in conformance with applicable prudential standards; (b) whether there has been evidence of a material violation of laws; or (c) events that would have a material adverse effect on the financial stability of banks in the country of the other authority. A material supervisory concern as described would include concerns that arise from actions of affiliates or associates of the bank.
4. Where remedial action is called for to address a material supervisory concern, each authority will endeavour to notify the other prior to it taking the appropriate action, or as soon thereafter as practicable.
5. In carrying out the undertakings of paragraphs 1(b), 2(b) and 4, in the case of a New Zealand registered bank or Australian authorised bank facing serious financial difficulties that could have a material adverse impact on the operations of such bank in the respective host country, the Reserve Bank of New Zealand and the Australian Prudential Regulation Authority recognise that close liaison between home and host authorities would be mutually advantageous. The Reserve Bank of New Zealand and the Australian Prudential Regulation Authority will

endeavour to communicate such information as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts by the home country authority to resolve the bank's difficulties and restore confidence in the bank.

6. In addition to the procedures outlined in paragraphs 1-5, upon written request to the Reserve Bank of New Zealand signed by an authorised official of the Australian Prudential Regulation Authority (as set out in the Schedule to this Memorandum of Understanding), the Reserve Bank of New Zealand may provide to the Australian Prudential Regulation Authority information contained in reports concerning the New Zealand branches, agencies, representative offices or subsidiaries of an Australian authorised bank; and any other confidential supervisory information regarding an Australian authorised bank or its New Zealand branches, agencies, representative offices or subsidiaries that is obtained as part of the supervisory process.
7. In addition to the procedures outlined in paragraphs 1-5, upon written request to the Australian Prudential Regulation Authority signed by an authorised official of the Reserve Bank of New Zealand (as set out in the Schedule to this Memorandum of Understanding), the Australian Prudential Regulation Authority may provide to the Reserve Bank of New Zealand information contained in any reports concerning the Australian branches, agencies, representative offices or subsidiaries of a New Zealand registered bank; and any other confidential supervisory information regarding a New Zealand registered bank or its Australian branches, agencies, representative offices or subsidiaries that is obtained as part of the supervisory process.
8. When there is a need for expedited action, requests for information under paragraphs 6 and 7 may be initiated in any form, including orally, but shall be confirmed subsequently in writing. The authorities will endeavour to provide information as quickly as possible in such circumstances.
9. Subject to paragraph 19, each authority undertakes to provide to the other information: (a) reasonably required by the other to facilitate a determination whether a proposed or continuing branch, agency, representative office or subsidiary meets the requirements for authorisation in the host country or continues to meet the requirements for authorisation; (b) regarding the extent and nature of its supervision of banks with operations in the other country; and (c) concerning material changes in, or developments with respect to, its supervisory regime. Such information may be supplied either upon request or at such times as the authorities may mutually agree.

Notification of Inspections

10. The Australian Prudential Regulation Authority will notify the Reserve Bank of New Zealand of plans to inspect formally any branch, agency, representative office or subsidiary of an Australian bank in New Zealand.

11. The Reserve Bank of New Zealand may accompany the Australian Prudential Regulation Authority during an inspection of a branch, agency, representative office or subsidiary in New Zealand.

Confidentiality

12. Any confidential supervisory information shared pursuant to this Memorandum shall be used only for lawful supervisory purposes.
13. To the extent permitted by law, the Australian Prudential Regulation Authority shall hold confidential all information received from the Reserve Bank of New Zealand on a confidential basis pursuant to this Memorandum and will not otherwise disclose such confidential information other than as necessary to carry out its supervisory responsibilities or otherwise in accordance with national law.
14. To the extent permitted by law, the Reserve Bank of New Zealand shall hold confidential all information received from the Australian Prudential Regulation Authority on a confidential basis pursuant to this Memorandum and will not otherwise disclose such confidential information other than as necessary to carry out its supervisory responsibilities or otherwise in accordance with national law.
15. All confidential supervisory information shall remain the property of the authority providing such information. Subject to the provisions of paragraphs 12-14, if the Reserve Bank of New Zealand or the Australian Prudential Regulation Authority receives any legally enforceable demand for supervisory information provided pursuant to this Memorandum the Reserve Bank of New Zealand or the Australian Prudential Regulation Authority as the case may be will promptly notify the party that provided the information and will co-operate in seeking to preserve the confidentiality of such information.
16. Subject to the provisions of paragraphs 12–14, with regard to requests from third parties for any confidential supervisory information provided pursuant to this Memorandum the party receiving such request shall notify the providing party as soon as feasible prior to releasing such information and shall solicit the providing party's views as to the propriety of providing such information to the third party. Where one party to this Memorandum in carrying out its supervisory responsibilities proposes voluntarily to disclose supervisory information to a third party, it also will solicit the providing party's views as to the propriety of the disclosure.
17. The sharing of confidential supervisory information in accordance with this Memorandum is done in reliance on the assurances given in paragraphs 12–16 and shall not constitute a waiver of any legally recognisable privilege for any person other than the parties to the Memorandum.
18. The Reserve Bank of New Zealand and the Australian Prudential Regulation Authority, in providing confidential written materials pursuant to this Memorandum shall mark every page of the material provided with a legend reading as follows: “Confidential – Provided Pursuant to RBNZ/APRA Memorandum of Understanding”.

General Provisions

- 19. The provision of, or request for, information under this Memorandum may be denied: (a) where compliance would require the Australian Prudential Regulation Authority or the Reserve Bank of New Zealand to act in a manner that would violate applicable law or any agreement entered into before the date of this Memorandum; (b) on grounds of public interest or national security; or (c) when compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where the prejudice to the investigation is likely to outweigh the adverse effects of denying the information.
- 20. By executing this Memorandum, neither party waives any immunity from suit 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 executed.
- 21. No provision of this Memorandum shall give rise to rights on the part of any person, entity or governmental authority other than the Reserve Bank of New Zealand or the Australian Prudential Regulation Authority.
- 22. This Memorandum shall continue in effect for a period of one year from the latest date entered below and shall automatically be renewed each year, subject to modification by the mutual consent of the Reserve Bank of New Zealand and the Australian Prudential Regulation Authority, provided, however, the provisions set forth under the heading “Confidentiality” and “General Provisions” shall not terminate with respect to any information provided or actions taken under this Memorandum prior to its termination.

Costs

- 23. The party from whom assistance is sought may, as a condition of agreeing to give assistance under this Memorandum, require the other party 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.

Confirmed:

By.....
Alan Bollard, Governor
Reserve Bank of New Zealand

Dated:

By
John Laker, Chairman
Australian Prudential Regulation Authority

Dated: