

## **MEMORANDUM OF UNDERSTANDING**

In view of the fact that a number of banking organisations incorporated in the United Kingdom (UK) have operations in New Zealand (NZ), and in the event that banking organisations in NZ were to establish operations in the UK, the Reserve Bank of New Zealand (the “Reserve Bank”) and the Financial Services Authority (the “FSA”) 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 will endeavour to notify the FSA and provide relevant information regarding a material supervisory concern that it may have in respect of:
  - (a) a UK banking organisation or any of its NZ branches, agencies, representative offices (collectively, “branches”) or subsidiaries; and
  - (b) the UK branches or subsidiaries of a NZ banking organisation.
  
2. The FSA will endeavour to notify the Reserve Bank and provide relevant information regarding a material supervisory concern that it may have in respect of:
  - (a) a NZ banking organisation or any of its UK branches or subsidiaries;  
and
  - (b) the NZ branches or subsidiaries of a UK banking organisation.
  
3. The term “material supervisory concern” encompasses any matter relating to (a) whether the operations of a banking organisation 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 law; or (c) events that would have a material adverse effect on the financial

stability of financial institutions 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 banking organisation.

4. Where remedial action is called for to address a material supervisory concern as described above, 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 an NZ or UK banking organisation facing serious financial difficulties that could have a material adverse impact on the operations of such banking organisation in the respective host country, the Reserve Bank and the FSA recognise that close liaison between home and host authorities would be mutually advantageous. The Reserve Bank and the FSA 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 above, upon written request to the Reserve Bank signed by an authorised official of the FSA, the Reserve Bank may provide to the FSA information contained in reports of examination or inspection of the NZ branches or subsidiaries of a UK banking organisation; and any other confidential supervisory information regarding a UK banking organisation or its NZ branches and subsidiaries that is obtained as part of the supervisory process. Such information normally would not include customer account information unless this is of particular relevance to the supervisory concern prompting the request. The FSA recognises that examinations and inspections are not a normal part of the NZ system and that the emphasis of the NZ system is on disclosure so that confidential information available to the Reserve Bank in the course of its supervision will be more limited than is the case in the UK system.

7. In addition to the procedures outlined in paragraphs 1-5 above, upon written request to the FSA signed by an authorised official of the Reserve Bank, the FSA may provide to the Reserve Bank information contained in any reports concerning the UK branches or subsidiaries of a NZ banking organisation; and any other confidential supervisory information regarding a NZ banking organisation or its UK branches and subsidiaries that is obtained as part of the supervisory process. Such information normally would not include customer account information unless this is of particular relevance to the supervisory concern prompting the request.
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. 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 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 banking organisations 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 OR REQUESTS FOR INSPECTIONS IN THE HOST COUNTRY**

1. The Reserve Bank will notify the FSA of plans to inspect formally any branch or subsidiary of a NZ banking organisation located in the UK and the FSA will notify the Reserve Bank of plans to inspect formally any branch or subsidiary of a UK banking organisation in NZ. The authority in the country where such inspections are to take place may inform the

inspecting authority of any subject matter in which it has a particular concern or interest.

2. The FSA may request on an exceptional basis the Reserve Bank to conduct an inspection of the NZ offices of a UK banking organisation the Reserve Bank may request on an exceptional basis the FSA to conduct an inspection of the UK offices of a NZ banking organisation. The FSA and the Reserve Bank will endeavour to agree the basis and terms upon which such inspections shall be conducted, consistent with the legal powers available to each.
3. The host authority may accompany the home authority during an inspection of a branch or subsidiary in the host country.

### **CONFIDENTIALITY**

1. Any confidential supervisory information shared pursuant to this Memorandum shall be used only for lawful supervisory purposes.
2. To the extent permitted by law, the FSA shall hold confidential all information received from the Reserve Bank 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.
3. To the extent permitted by law, the Reserve Bank shall hold confidential all information received from the FSA 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.
4. All confidential supervisory information shall remain the property of the authority providing such information. Subject to the provisions of paragraphs 1-3 above, if the Reserve Bank or FSA receives any legally

enforceable demand for supervisory information provided pursuant to this Memorandum, the Reserve Bank or the FSA, 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 reports.

5. Subject to the provisions of paragraphs 1-3 above, with regard to requests from third parties for any confidential supervisory information provided pursuant to the 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.
6. The sharing of confidential supervisory information in accordance with this Memorandum is done in reliance on the assurances given in paragraphs 1-5 above and shall not constitute a waiver of any legally recognisable privilege for any person other than the parties to this Memorandum.
7. The Reserve Bank and the FSA, 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/FSA  
MEMORANDUM OF UNDERSTANDING”**

### **GENERAL PROVISIONS**

1. The provision of, or request for, information under this Memorandum may be denied (a) where compliance would require the FSA or Reserve Bank 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.

2. 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.
3. No provision of this Memorandum shall give rise to the right on the part of any person, entity or governmental authority other than the Reserve Bank of the FSA, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this Memorandum.
4. 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 and the FSA, provided, however, that the provisions set forth under the headings “Confidentiality” and “General Provisions” shall not terminate with respect to any information provided or actions taken under this Memorandum prior to its termination.