

**MEMORANDUM OF UNDERSTANDING**

**between the**

**Malta Financial Services Authority (MFSA)**

**and the**

**Banking, Finance and Insurance Commission of Belgium (CBFA)**

**Memorandum of Understanding between the Malta Financial  
Services Authority and the Banking, Finance and Insurance  
Commission concerning their co-operation in the field of  
prudential supervision of credit institutions**

**Article 1. Object and parties**

1. The Malta Financial Services Authority (MFSA) and the Banking, Finance and Insurance Commission (CBFA), both hereinafter referred to jointly as "the Authorities" express their willingness to co-operate on the basis of mutual confidence and understanding and agree to base their co-operation in the field of supervision of credit institutions on the principles and procedures outlined in this Memorandum. This Memorandum serves as the basis for the co-operation between the two authorities.

The Memorandum does not establish any rights enforceable by the parties hereto or third parties, nor does it affect any provisions adopted in other Memoranda of Understanding.

2. The MFSA is a public authority established by an Act of Parliament (the Malta Financial Services Authority Act, Cap. 330 of the Laws of Malta, as amended). It has statutory powers of licensing, supervision and investigation, and has the ability to exercise its powers for the purpose of co-operation with foreign authorities. The MFSA is responsible for the regulation and supervision of credit and financial institutions, the business of insurance and insurance intermediaries' activities, investment services, collective investment schemes, retirement funds and trustees. As Listing Authority, the MFSA regulates recognised investment exchanges. The MFSA is the competent authority for the purposes of the Banking Act (Cap. 371 of the Laws of Malta).
3. The CBFA is an autonomous public institution which has its own legal personality. According to the Law of 22 March 1993 and the Law of 2 August 2002, the Banking, Finance and Insurance Commission is entrusted with the prudential supervision of credit institutions. In addition, according to the Law of 11 January 1993, the CBFA is entrusted with the supervision of compliance by said institutions with the obligations relating to the prevention of the use of the financial system for money laundering or terrorism financing purposes.

**Article 2. Definitions**

1. "Supervised institution" means a credit institution, in the meaning of Article 1, 1° of the European Directive 2000/12 of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, incorporated in Malta and being subject to the supervision of MFSA or incorporated in Belgium and being subject to the supervision of CBFA.

2. "Subsidiary" means a supervised institution incorporated in one of the countries concerned which is, directly or indirectly, controlled by a parent supervised institution, within the meaning of Article 1, 12° of the European Directive 2000/12, incorporated in the other country concerned.
3. "Branch" means a place of business of a supervised institution (or of a subsidiary of it), within the meaning of Article 1, 3° of the European Directive 2000/12, which has its seat in one of the countries concerned and has been licensed in the other country concerned.
4. 'Representative office' is an organisational unit of a supervised institution (or of a subsidiary of it), other than a branch, which has its seat in one of the countries concerned and the supervised institution of which it makes part is established in the other country.
5. "Cross-border establishment" means an establishment (branch, subsidiary or representative office) of a supervised institution incorporated in one of the countries concerned and operating in the other country concerned.
6. "Home-country Authority" means the Authority located in one of the countries concerned responsible for the supervision on a consolidated basis of a supervised institution.
7. "Host-country Authority" means the Authority located in the other country concerned in which a supervised institution has a cross-border establishment.

### **Article 3. Scope and objective of co-operation**

The Authorities intend to co-operate in the supervision of cross-border establishments within their respective jurisdiction.

The scope of co-operation encompasses in particular the licensing (issuance, change and revocation), prior approval of share acquisition as well as the ongoing supervision of cross-border establishments.

Cooperation implies

- the provision of information on cross-border establishments in or from the respective other country, unsolicited or upon specific request,
- assistance with regard to on site inspections and audits,
- collaboration concerning the execution of supervisory counter measures and,
- more generally, consultation and discussion aiming at resolving any supervisory problems.

The fundamental objective of co-operation between the Authorities is to ensure that all activities of supervised institutions with a cross-border establishment are subject to appropriate supervision. In the case of supervision on a consolidated basis, the first-line supervision of the subsidiary is carried out by the host-country Authority, but the home-country Authority has all rights and obligations connected with its supervisory tasks on a consolidated basis.

#### **Article 4. Mutual Exchange of Information**

1. The Authorities will mutually provide each other, in good time and spontaneously or on request, with any information on the following entities which might be relevant to the other Authority:
  - a supervised institution authorised in one country which applies for a licence or has cross-border establishment in the other country;
  - any cross-border establishment;
  - a non-bank entity or natural person domiciled in one country which intends to acquire a participation in the capital of a supervised institution incorporated in the other country, on condition that such information is available.
2. Requests for information in the framework of this Memorandum shall be made in writing and shall be addressed to the contact person of the requested authority listed in the appendix.

In case of emergency, requests for information and replies to such requests may be transmitted orally, provided that these requests are confirmed in writing, unless the requested authority agrees to waive such requirements.

The request should specify the following:

- a description of the subject matter of the request and the purpose for which the information is sought and the reasons why this information will be of assistance;
- a description of the specific information requested by the requesting authority;
- in so far as the request results from the investigation of violations of any laws or regulations, a short description of the relevant provisions that may have been violated and, if known to the requesting authority, a list of persons or institutions believed by the requesting authority to possess the information sought or the places where such information may be obtained;
- in so far as the request relates to information concerning the business or activities of any person, as precise information as the requesting authority is able to provide so as to enable such persons to be identified;

- an indication of the sensitivity of the information contained in the request and whether the requesting authority consents to the fact that the requested authority may disclose the request to persons whom the latter authority may need to approach for information;
- an indication of the urgency of the request, or the desired time period for the reply.

#### **Article 5. Granting of licenses and prior approval of acquisition of a share**

The following principles will apply to the co-operation among the Authorities in the field of granting of licenses and prior approval of acquisition of shares:

1. In addition to the co-operation provided for by the European Directives, if a supervised institution authorised by one Authority applies to the other Authority to establish a subsidiary, the latter shall inform the home-country Authority without delay and shall consult it before granting an authorisation to a cross-border establishment of the supervised institution.

In addition to the co-operation and notification provided for by the European Directive, if a supervised institution authorised by one Authority intends to establish a branch in the country of the other Authority, the host Authority may require information which is necessary to prepare the supervision of the branch, as referred to in Article 22 of the European Directive 2000/12.

In addition to the co-operation provided for by the European Directive, if a supervised institution authorised by one Authority intends to acquire a holding in a supervised institution of the other country, the Authority of the targeted institution shall inform the Authority of the proposed acquirer and shall consult it when assessing the proposed acquisition.

2. The home-country Authority shall inform the host-country Authority of the amount of own funds, the solvency ratio of the parent supervised institution on a solo and consolidated basis and the structure of the supervised institution's shareholders owning a share of 10% or more in the capital or voting rights of the supervised institution, and of whether it is fully subject to and complies with the domestic banking regulations, and of whether it is expected in the light of its administrative structure and internal control to run the cross-border establishment in an orderly and proper manner. The home-country Authority shall disclose to the host-country Authority information available which might give rise to doubts as regards the fitness and properness of the prospective managers of the cross-border establishment.
3. If a legal or natural person domiciled in one country applies for a license to establish a credit institution in the other country, the Authority of the country where the person is domiciled shall disclose to the other Authority any information available which might give rise to doubts as regards the fitness and properness of the prospective holders of participating interests in the credit institution.

4. The aforementioned information shall be provided on the basis of a written request made in good time by the relevant Authority to the other Authority by way of the designated contact person of the Authority.

#### **Article 6. Information on changes in the ownership structure of parent supervised institutions**

The home-country Authority shall inform the host-country Authority about changes in the ownership structure of a parent supervised institution authorised in its jurisdiction having a subsidiary or a branch in the other jurisdiction which indicate that another entity or a group of related entities has taken control of the parent supervised institution.

The aforementioned information shall be provided to the host-country Authority, save as where agreed otherwise, in good time and to the extent reasonable, by way of the designated contact person of the Authorities.

#### **Article 7. Co-operation regarding ongoing supervision and corrective action**

1. The Authorities will inform each other, in good time and to the extent reasonable, about any modifications in the general strategy of the parent supervised institution, which might significantly affect the financial safety and soundness of the cross-border establishment in the host country and any relevant matter which might endanger the stability of a supervised institution having cross-border establishments in the respective other country.

Relevant matters are in particular : concerns about the financial soundness of an institution (failure to meet capital adequacy or other financial requirements, significant losses, rapid decline in profits or a deterioration in profitability, liquidity problems), concerns relating to the management structure, compliance or internal control procedures, concerns arising from supervisory visits and on-site examinations.

2. The Authorities will inform each other without delay if they learn of an incipient crisis relating to any institution supervised by either Authority which has cross-border establishments or parent institutions in the respective other country.
3. The host-country Authority will collaborate with the home-country Authority, if the latter adopts supervisory corrective measures.
4. Representatives of the MFSA and the CBFA shall convene for ad-hoc meetings to promote the resolution of supervisory problems concerning a cross-border establishment in the respective other country, whenever either side deems necessary to do so.
5. For institutions which are licensed neither in Malta nor in Belgium and which apply for a license with one of the Authorities, the MFSA and the CBFA will, as far as they are able, discuss any significant information available to them which might be relevant to the other Authority.

### **Article 8. Co-operation regarding financial crime**

The Authorities will at the earliest opportunity inform each other when they identify suspected financial crime activities in supervised institutions and will co-operate closely in combating such activities. For the purposes of this agreement, financial crimes are in particular: money laundering and all violations of law on financial markets. This also includes unauthorised banking business. The Authorities will share information on financial crime concerning the respective institutions which carry out cross-border activities in the other state or which could affect the other state to the extent allowed under their laws. They may pass on this information with prior written consent received from the other Authority for regulatory or law enforcement purposes to other such authorities in the national jurisdiction.

### **Article 9. On-site inspections and audits**

1. The Authorities agree that co-operation is particularly useful in assisting each other in carrying out on-site inspections of cross-border establishments. The CBFA or auditors commissioned by CBFA are allowed to carry out on-site inspections of cross-border establishments of Belgian supervised institutions in Malta. The MFSA, or auditors or other agents commissioned by the MFSA, are allowed to carry out on-site inspections of cross-border establishments of Maltese supervised institutions in Belgium. The right to initiate such inspections lies with the CBFA and the MFSA. Neither Authority has the right to veto an on-site inspection or limit the scope of such an examination.
2. The home country Authority shall notify the host-country Authority usually two months in advance of the inspection giving details of the names of the examiners, the purpose of the audit and its expected duration.
3. The Authorities will allow each other to accompany any such on-site inspection carried out either by the Authorities themselves or the auditors or other agents commissioned by the Authorities.
4. During the course of an on-site inspection, if the host-country Authority participates in the inspection, it shall ensure that the home-country Authority representatives taking part in the inspections will be provided with all requested information relevant to the purpose of the consolidated supervision of the home-country Authority.
5. Reports of the on-site inspection will be exchanged between Authorities for informative purposes. If the parent supervised institution has been audited along with its cross-border establishment in the other country, the home-country Authority provides the host-country Authority with a summary report on the findings which bear relevance to the cross-border establishment.
6. Where both Authorities are in mutual agreement that an on-site inspection of a cross-border establishment would be conducted more effectively by the officials of the host-country Authority, such inspection may be conducted by the host-country Authority on behalf of the home-country Authority. In such instances, the host-

country Authority shall keep the home-country Authority duly informed of its activities and findings. It will, in particular, communicate a copy of the on-site inspection report to the home-country Authority.

#### **Article 10. Free Provision of Services**

The Authorities agree to co-operate and to exchange information and to provide assistance to each other with regard to supervised institutions providing services within the territory of the other country concerned in terms of Directive 2000/12/EC of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions.

#### **Article 11. Professional secrecy**

1. Compliance with the obligation of professional secrecy by all officials who receive confidential information from the other Authority in the course of their activities is a necessary condition for successful co-operation between the Authorities. The Authorities will maintain the confidentiality of all information received.
2. The materials provided pursuant to this Memorandum of Understanding and containing information covered by professional secrecy shall be marked with the following clause solely: Covered by professional secrecy.
3. The CBFA is bound by professional secrecy with regard to the confidential information it may obtain conducting its duties of supervisory authority. Secrecy provisions are laid down in articles 74 and 75 of the Law of 2 August 2002 on the supervision of the financial sector and financial services.
4. The MFSA is bound by professional secrecy with regard to the confidential information it may obtain conducting its duties of supervisory authority. Secrecy provisions are laid down in the Professional Secrecy Act (Cap. 377 of the Laws of Malta), Article 17 of the Malta Financial Services Authority Act (Cap. 330 of the Laws of Malta) and Article 34 of the Banking Act (Cap. 371 of the Laws of Malta).
5. The requesting authority will not disclose any information obtained unless it is necessary for carrying out its supervisory responsibilities and will not pass on any information to third parties without the prior written consent of the requested authority.
6. In cases where the requesting authority is legally bound to disclose information obtained to third parties but where the requested authority fails to consent with such disclosure, the requesting authority will draw attention to the information's addressees to the absence of consent and of the possible negative consequences of the disclosure on future exchange of confidential information between the MFSA and the CBFA or other foreign supervisory authorities.

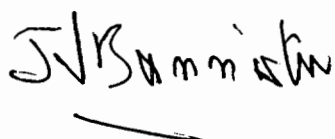


## **Article 12. Technical arrangements**

1. In order to enhance the quality of co-operation, representatives of the MFSA and the CBFA shall convene regularly to discuss issues concerning supervised institutions which maintain cross-border establishments within their respective jurisdiction. In these meetings they will also review the effectiveness of these arrangements. The Belgian and the Maltese supervisors intend to promote their co-operation by visits for informative purposes and by exchanges between staff.
2. The Authorities shall advise each other, upon request, on any aspect of their regulatory systems and shall notify each other about any major changes in the domestic rules and regulations within their jurisdiction, in particular about those changes which have a significant bearing on the activities of cross-border establishments.
3. For the purposes of this Memorandum, the Authorities shall use the lists of the authorised credit institutions within their jurisdictions published on their Internet websites. The MFSA website address is <http://www.mfsa.com.mt/>. The CBFA website address is <http://www.cbfa.be/>.
4. This Memorandum shall enter into force on the day of its signing by the MFSA and CBFA.
5. Co-operation and assistance in accordance with this Memorandum of Understanding will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to discontinue co-operation and assistance. If either Authority gives such notice, co-operation and assistance in accordance with this Memorandum will continue with respect to all requests for assistance that were made before the effective date of notification until the requesting Authority withdraws the matter for which assistance was requested. In the event of termination of this Memorandum, information obtained under this Memorandum of Understanding will continue to be treated according to the clause it is marked with.
6. Amendments to this Memorandum shall be made in writing only. Any such amendment to the Memorandum shall enter into force when signed by both Authorities.
7. The Memorandum has been prepared in two copies in English. Each Party has obtained one copy.

Signed at this day: 23rd October 2006

For the  
Malta Financial Services Authority



**Joseph V. Bannister**  
Chairman

For the  
Banking, Finance and Insurance  
Commission



**Eddy Wymeersch**  
Chairman