

**Memorandum of Understanding between  
the Commission for Banking Supervision  
and the Banking, Finance and Insurance Commission concerning  
their co-operation in the field of prudential supervision**

**A. GENERAL ISSUES**

1. The Commission for Banking Supervision (“CBS”) and the Banking, Finance and Insurance Commission (BFIC), 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 relevant institutions as defined in the relevant laws 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 Commission for Banking Supervision of the Republic of Poland is a collective body. The Commission’s function is to supervise banks located within the jurisdiction of the Republic of Poland (according to the Act of August 29, 1997 Polish Banking Act, O.J. of 2002, no 72, item 665 with amendments and the Act of August 29<sup>th</sup>, 1997 on National Bank of Poland O.J. of 2005, no 1, item 2).
3. The Banking, Finance and Insurance Commission is an autonomous public institution which has its own legal personality. According to the Law of 22 March 1993, the Law of 2 August 2002, and the Law of 11 January 1993, the Banking, Finance and Insurance Commission is entrusted with the prudential supervision of credit institutions and with the supervision of compliance by said institutions with anti-money laundering legislation.
4. Definitions
  - a) “supervised institution” means an institution incorporated in Poland and being subject to the supervision of CBS or means an institution incorporated in Belgium and being subject to the supervision of BFIC; at the present stage of legislation in both countries this also refers to credit institutions as defined in Directive 2000/12 EC;

- b) “branch” means a legally dependent unit of a supervised institution which has its seat in Poland (Belgium) pursuant to Article 1 (p 3) of the Directive 2000/12/EC established in the territory of the Belgium (Poland);
- c) “subsidiary” means a supervised institution incorporated in Poland (Belgium) which is controlled by a parent supervised institution incorporated in Belgium (Poland);
- d) ‘representative office’ is an organisational unit of a bank, other than a branch, which has its seat in the territory of one of the Authorities and is established in the territory of the other authority;
- e) “cross-border establishment” means an establishment (branch or subsidiary) of a supervised institution incorporated in Belgium (Poland) operating in Poland (Belgium);
- f) “home-country Authority” means the Authority located in Belgium (Poland) responsible for the supervision on a consolidated basis of a supervised institution;
- g) “host-country Authority” means the Authority located in Poland (Belgium) in which a supervised institution has a cross-border establishment.

## **B. INFORMATION AND CO-OPERATION REGARDING INSTITUTIONS**

5. 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 notification, licensing (both issuance and revocation) as well as the ongoing supervision of cross-border establishments.

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

6. 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 home authority must be sure that it can rely on the first line supervision carried out by the host authority.

### **C. LICENSING**

7. The home-country authority informs the host-country authority of the amount of own funds, the solvency ratio and the historic track-records of the parent supervised institution and whether it is fully subject to and complies with domestic banking regulations, and whether it is expected in light of its administrative structure and internal controls to run the cross-border establishment in an orderly and proper manner. The home-country authority discloses any information available to the host-country authority which might give rise to doubts as to the fit- and properness of the prospective managers of the cross-border establishment if appropriate.
8. The procedure described in the paragraph above shall be applied accordingly in case of acquiring a qualified participation of shares in a credit institution which has its seat under the jurisdiction of one authority by a supervised institution which has its seat under the jurisdiction of the other authority if granting for such an authorisation is required.

### **D. CO-OPERATION CONCERNING OWNER CONTROL**

9. In the context of owner control the Authorities shall consult with each other in the course of the licensing procedure to grant authorisation to a subsidiary of a supervised institution authorised in the other country or to consider and assess any acquisition of a share or interest in a supervised institution within the jurisdiction of the other Authority through a supervised institution within the jurisdiction of the other Authority.

### **E. ONGOING SUPERVISION; CORRECTIVE ACTION**

10. The CBS and the BFIC will inform each other, in good time and to what extent reasonable, about any modifications in the general strategy of the parent 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.

The CBS and the BFIC 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.

11. The host-country Authority will collaborate with the home-country Authority, if the latter adopts supervisory counter-measures.

12. Representatives of the CBS and the BFIC 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.
13. For institutions which are not licensed in Poland and in Belgium respectively and which are licensed or apply for a license with one of the Authorities, the CBS and the BFIC will, as far as they are able, discuss any significant information available to them which might be relevant to the other Authority.

#### **F. FINANCIAL CRIME**

14. The Authorities will immediately 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. 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.

#### **G. ON-SITE INSPECTIONS AND AUDITS**

15. The Authorities agree that co-operation is particularly useful in assisting each other in carrying out on-site inspections of cross-border establishments. The BFIC or examiners commissioned by BFIC are allowed to carry out on-site inspections of cross-border establishments of Belgian credit institutions in Poland. In return, the CBS is allowed to carry out on-site inspections of cross-border establishments of Polish credit institutions in Belgium. The right to initiate such inspections lies with the CBS and the BFIC. Neither Authority has the right to veto an on-site inspection or limit the scope of such an examination.

In order to make such on – site inspections effective, they will be conducted in the form of joint on – site examinations. Each Authority acts on its own responsibility.

- a) In the case of on-site inspection of cross-border establishments initiated by the home country Authority, 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. The host-country Authority will then invite the home-country Authority or auditors commissioned by the home-country Authority to the joint examination;
- b) During the course of joint on-site inspection The Host Authority shall ensure that the Home Authority representatives taking part in the inspections will be provided with all requested information relevant to the purpose of the consolidated oversight of the Home Authority;

- c) Reports of the joint inspection shall be exchanged between Host and Home Authorities for informative purposes.
16. In case where the host-country authority, within the framework of the prudential supervision of a subsidiary or branch operating on its territory, finds a case where explications and motives can be found at the parent institution of the cross-border establishment operating in the host-country, the host-country authority is to inform the home-country authority without delay, thereby justifying its specific prudential interest. After due consideration the home-country authority may request the host-country authority's supervisors to accompany the home-country's supervisors during a targeted on-site examination or verification at the parent institution in the home-country having a cross-border establishment in the host-country. Findings collected by the host-country's supervisors during the on-site inspection of the cross-border establishment in the host country or obtained in another way will be mutually used.

#### **H. FILING OF REQUESTS FOR INFORMATION AND PROFESSIONAL SECRECY**

17. 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 an 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) 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;
- b) a description of the specific information requested by the requesting authority;
- c) 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;
- d) 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;
- e) an indication of the sensitivity of the information contained in the request and whether the requesting authority consents to the fact that it has made the request to be disclosed to persons whom the requested authority may need to approach for information;
- f) an indication of the urgency of the request, or the desired time period for the reply.




18. Compliance with the obligation of professional secrecy by all officials who receive classified 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.

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.

The BFIC is bound by professional secrecy with regard to the confidential information it may possess as a supervisory authority of banks. 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.

Polish Supervisors are bound by professional secrecy with regard to the confidential information they may obtain conducting their duties. Secrecy provisions are laid down in article 55 of the Act on the National Bank of Poland of 29 August 1997.

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.

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 BFIC and the CBS or other foreign supervisory authorities.

## **I. TECHNICAL ARRANGEMENTS**

19. In order to enhance the quality of co-operation, representatives of the CBS and the BFIC 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 Polish supervisors intend to promote their co-operation by visits for informative purposes and by exchanges between staff.
20. The Authorities will ensure that upon request they send each other the relevant lists of licensed institutions which they have authorised. They advise each other upon request on any aspect of their regulatory systems and notify each other about any major changes in their domestic rules and regulations within their jurisdiction, in particular about those changes which have a significant bearing on the activities of cross-border establishments.



21. 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.
22. The Memorandum has been prepared in four copies – two in Polish, two in English, Each Party has obtained two copies – one copy in Polish and one in English. In case of any doubt with regard to its interpretation, the English version of the Memorandum shall prevail.

*Signed on February 9<sup>th</sup>, 2005*



**Leszek Balcerowicz**  
President of the National Bank of Poland  
Acting as the Chairman of the  
Commission for Banking Supervision



**Eddy Wymeersch**  
Chairman of the Banking, Finance and  
Insurance Commission



## APPENDIX

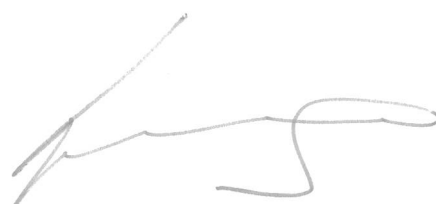
### to the Memorandum of Understanding between the Commission for Banking Supervision and the Banking, Finance and Insurance Commission concerning their co-operation in the field of prudential supervision

1. According to the paragraph H. 17 of the Memorandum, the contact persons are:
  - a. In the General Inspectorate for Banking Supervision performing tasks of the Commission for Banking Supervisions :
    - Director of the Bank Licensing Division and Deputy thereof;
    - Director of the Supervisory Policy Division and Deputy thereof;
    - Director of the Banking System Off-Site Analysis Division and Deputy thereof;
    - Director of the On-Site Examination Division and Deputy thereof;
    - Director of the Co-operative Banking Division and Deputy thereof.
  - b. In the Banking, Finance and Insurance Commission:
    - Director of Prudential Supervision of Credit Institutions Department;
    - Director of Prudential Policy Department;
    - Deputy Director of Prudential Policy Department;
    - Deputy Directors of Prudential Supervision of Credit Institutions Department.

*Signed on February 9<sup>th</sup>, 2005*



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President of the National Bank of Poland  
Acting as the Chairman of the  
Commission for Banking Supervision



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