

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
FINANCIAL AND CAPITAL MARKET COMMISSION  
OF THE REPUBLIC OF LATVIA  
AND THE  
CENTRAL BANK OF CYPRUS  
CONCERNING THEIR CO-OPERATION  
IN THE FIELD OF SUPERVISION  
OF CREDIT INSTITUTIONS**

1. The Financial and Capital Market Commission of the Republic of Latvia ("the FCMC") and the Central Bank of Cyprus ("the CBC") express their willingness to co-operate on the basis of mutual trust 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 of Understanding. This Memorandum of Understanding is not considered to be an international agreement within the meaning of Latvian or Cypriot Law. Consequently, it neither establishes any legally binding obligations nor supersedes any laws and regulations in force either in Latvia or in Cyprus.
2. The FCMC is the competent authority for regulation and monitoring of the financial and capital market and its participants in accordance with the powers vested in it by the Law on the Financial and Capital Market Commission (in effect since July 1, 2001).
3. The CBC is the competent authority for the licensing and supervision of banks, in accordance with the powers vested in it by the Central Bank of Cyprus Law 138 (I) 2002 and the Banking Law 66 (I)/1997, both as subsequently amended.

**Definitions**

4. For the purposes of this Memorandum of Understanding, the following expressions shall have the following meaning:

"countries": Cyprus and Latvia.

"Authority": the FCMC and / or the CBC.

"credit institution": an entity licensed as a bank under the Credit Institution Law of Latvia (in effect since October 24, 1995), or as a

bank under the Banking Law 66(I) of 1997 of Cyprus, as subsequently amended.

“cross-border establishment”:

a representative office, a branch office or a subsidiary established in Latvia of a (parent) credit institution which is authorised in Cyprus, or

a representative office, a branch office or a subsidiary established in Cyprus of a (parent) credit institution which is authorised in Latvia.

“branch office”:

a legally dependent unit of a credit institution, incorporated in one of the countries, which is established and operates in the territory of the other.

“subsidiary”:

a legally independent credit institution incorporated in the territory of one of the countries, which is wholly owned or majority owned by a (parent) credit institution incorporated in the other country.

“Representative office”:

an organisational unit, other than a branch, of a credit institution incorporated in the territory of one of the countries, which is established in the other country and is not entitled to perform banking business.

“Financial holding company”:

an entity, which meets the criteria stipulated in Article 4 (para 19) of Directive 2006/48/EC.

“Financial institution”:

an entity, which meets the criteria stipulated in Article 4 (para 5) of Directive 2006/48/EC.

“Ancillary banking services Company” :

a company providing services as stipulated in Article 4 (para 21) of Directive 2006/48/EC.

“Home-country Authority”:

the Authority supervising

- (a) in the case of a branch office or a representative office the head credit institution which set up the said branch office or representative office, or

(b) in the case of a subsidiary the parent credit institution.

“Host-country Authority”: the Authority responsible for the supervision of cross-border establishments.

“Directive 2006/48/EC”: Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast).

### **Information Regarding Credit Institutions and Cross-Border Establishments**

5. The Authorities intend to co-operate in the supervision of cross-border establishments of credit institutions incorporated in the respective other country and within their respective jurisdiction. The scope of co-operation encompasses the licensing (both issuance and revocation) as well as the on-going supervision of the cross-border establishments, be they representative offices, branches, or subsidiaries and the cross-border provision of services. The Authorities shall advise each other on cross-border establishments in or from within the respective other country, upon specific request, to the extent permitted by law.

The Authorities endorse within this scope a broad principle of exchange of information between the home and the host-country Authority in order to support and facilitate their respective supervisory tasks including measures to facilitate supervision on a consolidated basis according to Articles 139 to 142 of Directive 2006/48/EC. The Authorities agree that the scope of this exchange of information shall also include as far as possible information, which might be of importance for their supervisory activities in the framework of the Basel II Accord (Directive 2006/48/EC, Directive 2006/49/EC) and its transposition into Latvian and Cyprus banking supervisory law.

### **Freedom of Establishment and the Freedom to provide Services**

6. If a credit institution, based in one of the two countries, notifies its home-country Authority of its intention to establish a branch office or to provide banking services under the freedom to provide services in the host country, the home-country Authority is to inform the host-country Authority.
7. In the case of the establishment of a branch office, the home-country Authority is to inform the host-country Authority as provided for in Art 25 para 2, 3 and 4

of Directive 2006/48/EC communicating to the latter all the relevant information, as specified therein. The home-country Authority, furthermore, is to inform the host-country Authority about the details of the guarantee scheme, which is intended to ensure the protection of depositors (investors) of the branch office. The home-country Authority shall also disclose any piece of information in its possession to the host-country Authority, which might give rise to doubts as to the fitness and properness of the prospective managers or controllers of the cross-border establishment.

8. The freedom to provide services in Cyprus and Latvia is governed by the respective national provisions transposing the relevant provisions of Title III of Directive 2006/48/EC into Latvian and Cypriot Law. The Authorities agree to cooperate, 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 (without establishing a branch or a subsidiary) in accordance with the relevant provisions of Directive 2006/48/EC.

#### **Co-operation Concerning Ownership Control**

9. The Authorities shall consult each other before granting authorisation to a subsidiary of a credit institution, or a subsidiary of the parent undertaking of a credit institution authorised in the other country, or a credit institution controlled by the same persons, whether natural or legal, as control a credit institution authorised in the other country, or when assessing any acquisition of a qualifying holding as defined in Art 4 para 11 of the Directive 2006/48/EC in a domestic credit institution through a credit institution established within the jurisdiction of the other Authority.

#### **On-going Supervision; Corrective Actions**

10. Branches shall be supervised according to the respective national provisions transposing Articles 29 to 37 and 40 to 55 of Directive 2006/48/EC into Latvian and Cypriot Law. Subsidiaries shall be supervised by the host-country Authority in accordance with the law of the host country. In addition, cross-border establishments shall be subject to the consolidated supervision of the home-country Authority. The Authorities agree to take joint measures for the supervision of cross-border establishments wherever possible.
11. The Authorities shall inform each other, in good time and to the extent reasonable, about any event which has the potential to endanger the stability of

credit institutions having cross-border establishments in the respective other country. They shall also notify each other of administrative penalties of material importance, which they have imposed or any other action which they have taken on such a cross-border establishment as host-country Authority or on the (parent) credit institution as home-country Authority if the information is important to the other Authority.

12. The Authorities shall exchange and discuss as appropriate any significant information on credit institutions having cross-border establishments in the other country, which might be relevant to the other Authority. Relevant matters shall include: 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), concerns relating to compliance or control procedures, concerns arising from supervisory visits, prudential interviews or reports from and communications with an institution or other regulatory body, concerns arising from late or inaccurate prudential returns, concerns relating to supervisory arrangements in third countries and concerns arising from supervision of a credit institution on a consolidated basis. In case the cross-border establishment is a branch the relevant matters shall include: changes in shareholders and/or the credit institution's management, changes in the credit institution's indicators of financial performance.
13. Representatives of the Authorities may convene ad-hoc meetings to endeavour to resolve supervisory problems concerning the cross-border provision of services or a cross-border establishment in their respective countries, whenever either side deems it necessary.

### **Financial Crime and Unauthorised Business**

14. The Authorities acknowledge the need for international co-operation in the field of the prevention and combating of financial crime, in particular concerning money-laundering and terrorism financing. Although the main competences for the prosecution of financial crime rest with other authorities, the Authorities will co-operate in matters of financial crime within their respective competences and responsibilities. The Authorities will also cooperate with regard to the prevention and combating of unauthorised banking business (e.g. providing banking business without a valid banking licence).

### **Crisis Situations**

15. The Authorities will inform each other without delay if they learn of an incipient crisis relating to any credit institution supervised by either country, which has cross-border establishments in the respective other country.

### **Customer Complaints**

16. Complaints made about cross-border establishments should be handled by the relevant authorising Authority. If, as a result of any such complaint, any information comes to the attention of either the FCMC or the CBC, which is relevant to the other Authority, the FCMC and the CBC will ensure that this shall be communicated properly.

The FCMC, in Latvia, and the CBC, in Cyprus, are not entitled to intervene as fact-finder, mediator or arbitrator in a civil law case, since the sole jurisdiction in those matters lies with the national judiciary. Any complaint against credit institutions lodged with the Authorities would only be examined in order to find out whether supervisory measures ought to be taken on the grounds that the queried activities of the institution showed deficiencies in the fitness and properness of the management or even amounted to harmful tendencies in the banking and financial services industry.

### **On-site Inspections**

17. The Authorities recognize the importance of consolidated supervision, and they agree that co-operation is particularly useful in assisting each other in carrying out on-site inspections of cross-border establishments, including financial holding companies, financial institutions and ancillary banking services companies to the extent relevant for the consolidated supervision according to Articles 139 to 142 of Directive 2006/48/EC. The CBC will allow the FCMC to carry out on-site inspections of representative offices, and direct or indirect subsidiaries, and will also provide all possible assistance in respect of financial holding companies, financial institutions and ancillary banking services companies, to the extent relevant for the consolidated supervision of Latvian credit institutions in Cyprus. In the same manner, the FCMC will allow the CBC to carry out on-site inspections of representative offices, direct or indirect subsidiaries, financial holding companies, financial institutions and ancillary banking services companies to the extent relevant for the consolidated supervision of Cypriot credit Institutions in Latvia. Both the home country

Authority and the host country Authority have the right to carry out on site inspections of cross-border branches in the host state.

18. The Authorities shall notify each other at least one month in advance of any inspection, unless the urgency of the inspection allows only a shorter notice, giving the names of the examiners, the purpose of the on-site inspection and its expected duration. The Authorities will allow each other to accompany any such on-site inspection carried out by the Authorities. The Authorities will keep each other informed on the results of the inspections by submitting summaries on the findings to the extent reasonable and in a timely manner. If the parent credit institution has been audited along with its cross-border establishment in the other country, the home-country Authority shall provide the host-country Authority with a summary report on the findings, which bear relevance to the cross-border establishment.
19. The Authorities shall cover their own costs with regard to cross-border examinations.

#### **Professional Secrecy**

20. (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 shall seek compliance with the letter and spirit of Articles 44 to 52 of Directive 2006/48/EC.
- (2) The Authorities may not disclose any confidential information to third parties without the prior written consent of the party that had provided this confidential information. If the disclosure of confidential information to a government agency or judicial authority is required by law, the relevant Authority shall promptly notify the other Authority that had provided this confidential information.
- (3) The obligation of the Authorities to maintain professional secrecy in compliance with paragraphs (1) and (2) shall remain in effect even in case of the termination of this Memorandum.

## Technical Arrangements

21. In order to enhance the quality of co-operation, representatives of the Authorities intend to convene regularly to discuss issues concerning credit institutions, which maintain cross-border establishments within their respective jurisdiction. In these meetings they will also review the effectiveness of these arrangements.
22. For the purposes of this Memorandum, the FCMC and the CBC shall use the lists of licensed credit institutions within their jurisdictions published on their respective internet websites. The FCMC's website address is <http://www.fktk.lv/>. The CBC's website address is <http://www.centralbank.gov.cy>. The Authorities shall advise each other upon request on any aspect of their regulatory systems and notify each other about any major change in their domestic rules and regulations, in particular about those changes which have a significant bearing on the activities of cross-border establishments.
23. Requests for information will be made in writing and addressed to the contact persons of the requested Authority as set out in Annex A. In urgent cases requests may be transmitted orally provided that these requests are confirmed in writing as soon as possible.
24. This Memorandum shall enter into force and shall be binding on the parties upon its signature by both parties. The Authorities do not oppose making this Memorandum publicly available at the respective Authority's Web site.
25. This Memorandum of Understanding shall be valid until either party notifies the other in writing of its wish to revise, to amend or to withdraw from the MoU. In these cases at least 30 days advance written notice shall be given to the other Authority.
26. 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 confidentially.

27. The FCMC and the CBC shall consult as necessary from time to time to review and, if appropriate, revise the present Memorandum of Understanding in the light of future developments at national and EU level and according to experience gained in the supervision of their respective institutions. The Memorandum shall be changed or amended only in writing with the signature of the Authorities.
28. This Memorandum of Understanding shall be interpreted and implemented in line with the requirements of EC law and in particular those of Directive 2006/48/EC.
29. This Memorandum shall be done in English in two copies, both copies being original. The CBC and the FCMC shall each retain one copy.
30. As of the date of the coming into force of this Memorandum, the Memorandum of Understanding between the FCMC and the CBC on the Exchange of Information for Co-operation and Consultation in the fields of Supervision and Regulation of Credit Institutions and International Collective Investment Schemes, signed on 16 April, 2003, shall be terminated.

**For the Central Bank of Cyprus**

  
\_\_\_\_\_  
Athanasios Orphanides  
Governor



Date: 29/5/09

**For the Financial and Capital  
Market Commission of the  
Republic of Latvia**

  
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Irena Krumane  
Chairwoman



Date: 05.05.2009

  
05.05.2009  
K. Batraga

## **Annex A**

### **List of Contact Persons**

#### **For the Central Bank of Cyprus:**

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