

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE**  
**DUBAI FINANCIAL SERVICES AUTHORITY**  
**AND THE**  
**BANKING, FINANCE AND INSURANCE COMMISSION BELGIUM**  
**CONCERNING MUTUAL COOPERATION**

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1. The Dubai Financial Services Authority (DFSA) and the Banking, Finance and Insurance Commission (CBFA) (collectively, the Authorities) have reached the following understanding in order to establish an arrangement for the sharing of information to facilitate the performance of their respective duties and to promote the safe and sound functioning of supervised organizations with cross-border establishments in their respective jurisdictions.

2. The Authorities express, through this understanding, their willingness to cooperate with each other on the basis of mutual trust and understanding in the supervision of cross-border establishments within their respective jurisdictions.

A cross-border establishment is defined as a branch, a subsidiary or any other entity of an institution supervised by one Authority (the host Authority), which gives rise to the need for consolidated or group-wide supervision by the other Authority (the home Authority).

A supervised institution is defined as a banking company, investment firm or insurance company.

A banking company is defined as any firm or company that is licensed or supervised or regulated by the DFSA to conduct banking and related business, or a credit institution or financial holding company subject to regulation or supervision by the CBFA.

An investment firm is defined as any firm or company that is licensed or supervised or regulated by the DFSA to conduct investment and related business, or an investment firm, financial holding company or management company for institutions for collective investment subject to regulation or supervision by the CBFA.

An insurance company is defined as any firm or company that is licensed or supervised or regulated by the DFSA to conduct insurance and related business, or an

insurance company, a reinsurance<sup>1</sup> company, an insurance holding company or a mixed activity insurance holding company subject to regulation or supervision by the CBFA.

### **The Authorities**

3. The DFSA is the independent financial services and market regulator of the Dubai International Financial Centre (DIFC) established under Dubai Law No. 9 of 2004. The DFSA administers the DIFC Regulatory Law No. 1 of 2004, which provides, among other things, for the authorization, registration, recognition and supervision of financial service providers, financial services and products related to banking, securities, Islamic finance, collective investment schemes, asset management, trust services and insurance and re-insurance. The DFSA has the authority under the DIFC Markets Law No. 12 of 2004 to regulate the securities markets, including futures and derivatives.

4. The CBFA is an autonomous public institution which has its own legal personality. The CBFA has been vested by the Law of 2 August 2002 on the supervision of the financial sector and on financial services, with the prudential supervision of supervised institutions as defined in 2. above. Those institutions are licensed by the CBFA pursuant to the Law of 9 July 1975 on the supervision of insurance undertakings, to the Law of 22 March 1993 on the legal status and supervision of credit institutions, to the Law of 6 April 1995 on the legal status and supervision of investment firms and to the Law of 20 July 2004 on certain forms of collective management of investment portfolios. Pursuant to the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorism financing, the CBFA supervises compliance by the institutions defined in 2. above with anti-money laundering and counter-terrorism financing obligations.

### **Scope and General Principles**

5. The provisions of this Memorandum of Understanding are not intended to create legally binding obligations or supersede domestic laws.

This Memorandum of Understanding is intended to complement, but does not alter the terms and conditions of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, to which the DFSA and CBFA are signatories and which covers information-sharing in the context of enforcement investigations.

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<sup>1</sup> Reinsurance undertakings will only fall under the scope of this Memorandum of Understanding once the Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC, will be transposed into Belgian Law.

6. The Authorities will, within the framework of this Memorandum of Understanding, provide each other with the fullest assistance possible to promote the safe and sound functioning of supervised institutions and of their cross-border establishments in particular.

7. The Authorities recognize the importance and desirability of mutual assistance and exchange of information. Information would be shared to the extent reasonable and subject to any relevant statutory provisions, including those restricting disclosure. In addition, the provision of or request for information under this Memorandum of Understanding may be denied

(i) where the request would require the Requested Authority to act in a manner that would violate domestic law;

(ii) where a criminal proceeding has already been initiated in the jurisdiction of the Requested Authority based upon the same facts and against the same persons, or the same persons have already been the subject of final punitive sanctions on the same charges by the competent authorities of the jurisdiction of the Requested Authority, unless the Requesting Authority can demonstrate that the relief or sanctions sought in any proceedings initiated by the Requesting Authority would not be of the same nature or duplicative of any relief or sanctions obtained in the jurisdiction of the Requested Authority;

(iii) where the request is not made in accordance with the provisions of this Memorandum of Understanding; or

(iv) on grounds of public interest, essential national interest or national security.

Where a request for assistance is denied, or where assistance is not available under domestic law, the requested Authority will provide the reasons for not granting the assistance.

8. Requests for assistance will be made in writing by designated employees of the Authority and will be addressed to the requested Authority's contact persons (Annex A). However, where the Authorities perceive a need for expedited action, requests may be initiated in any form but should be confirmed subsequently in writing. The request for information should indicate the sensitivity of the information contained in the request. The request should also indicate the urgency of the request, or the desired time period for the reply.

### **Sharing of information**

9. The authorities recognize that an important part of their mutual co-operation is the exchange of all relevant information to the extent reasonable and useful in order to facilitate the performance of their respective functions.

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10. In particular, information-sharing includes contact during the authorization and licensing process, in the supervision of the on-going activities of supervised institutions and in the handling of problem organizations.

11. In connection with the licensing process and with the process of authorization of acquisition:

- (a) the host Authority should notify the home Authority, without delay, of applications for approval to establish offices or make acquisitions in the host jurisdiction;
- (b) upon request, the home Authority should inform the host Authority whether the applicant supervised institution is in compliance with applicable laws and regulations and whether it may be expected, given its administrative structure and internal controls, to manage the cross-border establishment in an orderly manner. When requested, the home Authority will inform the host Authority of the amount of own funds and solvency ratios. The home Authority should also, upon request, assist the host Authority with verifying or supplementing any information submitted by the applicant;
- (c) upon request, the home Authority should inform the host Authority about the nature of its regulatory system and the extent to which it will conduct consolidated or group-wide supervision over the applicant supervised institution. Similarly, the host Authority should inform the home Authority about the nature of its regulatory system and the extent to which it will supervise the cross-border establishment of the applicant organization; and
- (d) to the extent permitted by law, the home and host Authorities should share information on the fitness and properness of prospective managers of a cross-border establishment.

Furthermore, for entities which are not licensed in either the DIFC or in Belgium and apply for a license with one of the Authorities, the DFSA 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.

12. In connection with the ongoing supervision of their cross-border establishments, the Authorities intend to:

- (a) provide relevant information to their counterpart regarding material developments or supervisory concerns in respect of the operations of a cross-border establishment;
- (b) respond to requests for information on their respective national regulatory systems and inform each other about major changes, in particular those which have a significant bearing on the activities of cross-border establishments;
- (c) inform their counterpart of material administrative penalties imposed, or other formal enforcement action taken, against a cross-border establishment. Prior notification shall be made, as far as practicable and subject to applicable laws. Furthermore, the Authorities agree to collaborate, where appropriate, in cases where supervisory corrective measures are taken against a cross-border establishment;

- (d) facilitate the transmission of any other relevant information that might be required to assist with the supervisory process; and
- (e) inform each other without delay if they learn of an incipient crisis relating to any supervised institution supervised by either Authority.

13. The Authorities will take the initiative to inform the other Authority of any information which it deems relevant for facilitating the performance of their respective functions.

### **On-site inspections**

14. The host Authority will allow the home Authority to conduct on-site inspections on its territory. The Authorities recognize that cooperation is particularly useful in assisting each other in carrying out on-site inspections<sup>2</sup> of cross-border establishments in the host jurisdiction. Prior to deciding whether an on-site inspection is necessary, the home Authority may review any relevant examination reports prepared by the host Authority. The home Authority should undertake to notify the host Authority of plans to examine a cross-border establishment or to appoint a third party to conduct an examination on its behalf, and to indicate the purposes and scope of the visit. As may be mutually agreed between the parties, examinations may be carried out by the home Authority alone, or accompanied by the host Authority. Following the inspection, an exchange of views should take place between the examination team and the host Authority and the reports of the on-site inspection will be exchanged between Authorities for informative purposes.

### **Protection of information**

15. The Authorities recognize that mutual trust can only be achieved if exchanges of information can flow with confidence in both directions. The Authorities agree to take all possible steps to preserve the confidentiality of the information received. In this regard, employees of both Authorities are bound to hold confidential all information obtained in the course of their duties. Any confidential information received from the other Authority will be used exclusively for lawful supervisory purposes. The materials provided pursuant to this Memorandum of Understanding and containing information covered by professional secrecy or subject to privilege shall be marked with one of the following clauses solely: 'Covered by professional secrecy' or 'subject to privilege'.

16. An Authority that has received confidential information from the other Authority may subsequently receive a request (not legally enforceable) for that information from a third party, including a third party supervisory authority, who has a legitimate common interest in the matter. Prior to passing information to the third party, the Authority will consult with and obtain agreement from the Authority that originated the information, who may attach

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<sup>2</sup> The words "inspection" and "examination" are used here interchangeably.

conditions to the release of information, including that the third party recipient be bound to hold the information confidential.

17. In the event that an Authority is legally compelled to disclose to a third party, including a third party supervisory authority, information that has been provided in accordance with this Memorandum of Understanding, this Authority will promptly notify the Authority that originated the information, indicating what information it is compelled to release and the circumstances surrounding its release. The Authority will use its best endeavors to preserve the confidentiality of the information to the extent permitted by law. The Authorities will inform one another of the circumstances in which they may be subject to legal compulsion to release information obtained.

### **Financial Crime**

18. The Authorities intend to co-operate closely when they identify suspected financial crime activities in supervised institutions and financial transactions. For the purposes of this agreement, financial crimes include: money laundering, terrorist financing, fraud, unauthorized banking, investment or insurance business and all other violations of law on financial markets.

### **Ongoing Coordination**

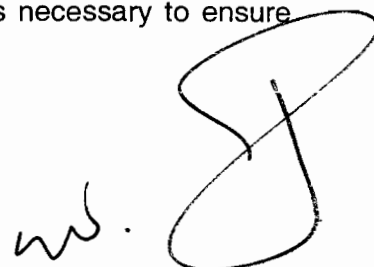
19. The Authorities agree to promote their cooperation through visits for information purposes. In addition, the Authorities agree to pursue areas where the training of staff at either agency would benefit from input and support by the other agency in order to reinforce sound supervisory practices in both jurisdictions.

20. The Authorities will conduct meetings as often as appropriate to discuss issues concerning supervised institutions that maintain cross-border establishments in the respective jurisdictions, and to review the effectiveness of cooperation arrangements.

### **Modifications and Term**

21. This understanding shall continue indefinitely subject to modification by the mutual consent of the Authorities or termination by either party with 30 days advance notice in writing. After termination, the confidentiality provisions shall continue to apply to any information provided under this understanding prior to termination.

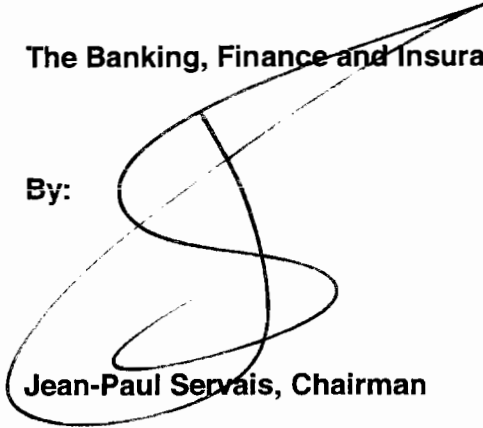
22. Annex A will be reviewed at least annually and amended as necessary to ensure that the information therein remains current.

A handwritten signature in black ink, consisting of a stylized 'W' followed by a large, circular flourish.

On behalf of:

**The Banking, Finance and Insurance Commission Belgium**

By:



**Jean-Paul Servais, Chairman**

Dated:

8/7/2008

**The Dubai Financial Services Authority**

By:



**David Knott, Chief Executive;**

Dated:

8 July '08

Annex A: Contact Persons

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