

法規名稱：EXCHANGE OF LETTERS BETWEEN THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA) AND THE FINANCIAL SUPERVISORY COMMISSION (FSC)

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#### Recitals

- A. APRA is the national prudential regulator in Australia, established on 1 July 1998 under the Australian Prudential Regulation Authority Act 1998. APRA administers legislation providing for the supervision of authorised deposit-taking institutions (banks, building societies and credit unions), general insurance and reinsurance companies, life insurance companies, friendly societies and superannuation funds authorised to operate in Australia.
- B. The FSC is Taiwan's financial services and markets regulator, whose authority is empowered by the Organic Act Governing the Establishment of the Financial Supervisory Commission and other applicable laws and regulations to supervise financial services, financial products and financial markets.
- C. The APRA and FSC wish to enter into this Exchange of Letters to provide a basis for co-operation, including the exchange of information and investigative assistance. The APRA and FSC believe such co-operation will enable them to more effectively perform their functions.

#### Definitions

1. In this Exchange of Letters, unless the context requires otherwise:
- "Authorities" means the APRA and FSC;
  - "requested Authority" means the Authority to whom a request is made under this Exchange of Letters;
  - "requesting Authority" means the Authority making a request under this Exchange of Letters;
  - "laws and regulations" means any law, rule, regulation or requirement applicable in Australia and/or in Taiwan, and

where the context permits, includes:

(a) any law, regulation or requirement applicable in Australia or Taiwan; and

(b) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority; "administering" an applicable law, regulation or requirement includes enforcing the same;

"permitted onward recipient" means an agency or authority responsible for prosecuting, regulating or enforcing applicable laws, regulations and requirements falling within the areas of responsibility of the Authorities;

"person" means a natural person, legal entity, partnership or unincorporated association;

"cross border establishment" means a branch, subsidiary or any other banking and/or insurance/reinsurance entity or group within one jurisdiction which falls under the consolidated or group wide banking and/or insurance/reinsurance supervision (or prospective supervision) responsibility of the other jurisdiction (listed in Appendix 1). Cross-border establishments include those where the APRA and FSC are both host Authorities (no list will be maintained);

"insurance/reinsurance entity or group" means authorised (or prospectively authorised) institution/group/ affiliate (or parts thereof) whose activities include underwriting of insurance or reinsurance and with operations supervised (or prospectively supervised) by either Authority;

"banking entity or group" means authorised (or prospectively authorised) institution/ group/ affiliate (or parts thereof) whose activities include banking business and with operations supervised (or prospectively supervised) by either Authority.

#### Purpose and principles

2. The purpose of this Exchange of Letters is to establish a basis for co-operation, including the exchange of information and investigative assistance, to:

- (a) promote the safe and sound functioning of institutions and groups in the Authorities' respective jurisdictions, particularly cross border establishments;
  - (b) assist in the discovery of contraventions of laws and regulations administered by the Authorities;
  - (c) assist in the enforcement of applicable laws and regulations in the field of banking and insurance; and
  - (d) promote the fitness and propriety of directors, managers and other responsible persons of regulated entities in the countries of the Authorities.
3. This Exchange of Letters does not modify or supersede any laws and regulations in force in, or applying to, Australia or Taiwan. This Exchange of Letters sets forth a statement of intent and accordingly does not create any enforceable rights. This Exchange of Letters does not affect any other arrangements.
4. The performance of the provisions of this Exchange of Letters will be consistent with domestic laws, regulations and conventions of the respective jurisdictions of the Authorities and within the availability of the respective resources of the Authorities. The performance of the provisions will not be contrary to the public interests of the requested Authority.
5. To the extent permitted by the laws and regulations of Australia and Taiwan, the Authorities will make reasonable efforts to provide each other with information which is discovered and which gives rise to a suspicion of a breach, or anticipated breach, of the laws and regulations of the other Authority's jurisdiction. The Authorities also acknowledge that information that does not relate to a suspected breach, or anticipated breach, of the laws and regulations of the other Authority's jurisdiction may be provided.
6. The Authorities acknowledge that they may only provide information under this Exchange of Letters if permitted or not prevented under applicable laws and regulations. Any information provided must be used for lawful supervisory

purposes.

#### Provision of Unsolicited Information

7. The Authorities may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made, including:
- (a) information that would assist to promote the safe and sound functioning of regulated entities or groups of the other Authority; and/or
  - (b) information about major changes to their supervisory structure, functions or policies, particularly those that may have a significant bearing on the activities of cross border establishments.
8. The Authorities intend to provide relevant information to each other, in a timely manner, regarding any event that has the potential to have a material adverse impact on the operations of a cross border establishment (excluding those where the APRA and FSC are host Authorities). Each will inform the other of material administrative penalties imposed, or other formal enforcement action taken against a banking or insurance/reinsurance entity or group, or its management. Prior notification of such action will be given as far as practicable.

#### Requests for Assistance

9. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to its laws and regulations. Assistance may include for example:
- (a) providing information in the possession of the requested Authority;
  - (b) confirming or verifying information provided to it for that purpose by the requesting Authority;
  - (c) exchanging information on or discussing issues of mutual interest;

- (d)obtaining specified information and documents from persons where to do so would further the supervisory functions of the requested Authority;
- (e)conducting inspections or examinations of regulated entities where to do so would further the supervisory functions of the requested Authority;
- (f)helping to arrange, as far as reasonably possible, an inspection or examination in the requested Authority's jurisdiction. The requested Authority reserves the right to accompany the requesting Authority on such an examination or inspection; and
- (g)permitting the representatives of the requesting Authority to participate in the conduct of enquiries made by or on behalf of the requested Authority pursuant to paragraph (e) above.

#### Procedure for Requests

10.Requests for the provision of information or other assistance will be made in writing and addressed to the contact person of the requested Authority listed in Appendix 2. An urgent request for assistance and a reply to such a request may be made orally, provided it is confirmed in writing within ten business days. To facilitate assistance, the requesting Authority should specify in any written request:

- (a)the information or other assistance requested;
- (b)if information is provided by the requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
- (c)the purpose for which the information or other assistance is sought;
- (d)to whom, if anyone, onward disclosure of information provided to the requesting Authority is likely to be necessary and the reason for such disclosure. In relation to onward disclosure to a person who is not a permitted onward recipient, the purpose such disclosure would serve

and the commitment of confidentiality the person would offer;

- (e) if the request for assistance is for the purpose of actual or possible enforcement action, the matters set out in clause 1 of Appendix 3; and
- (f) any other matters specified by the requested Authority and by the applicable laws and regulations in relation to the requested Authority.

### Assessing Requests

11. Each request for assistance will be assessed on a case-by-case basis by the requested Authority to determine whether assistance can be provided under the terms of this Exchange of Letters and to the extent permitted by its domestic laws and regulations. In any case where the request cannot be fulfilled in part or whole, the requested Authority will consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.
12. In deciding whether and to what extent to fulfil a request, the requested Authority may take into account:
  - (a) whether the request conforms with this Exchange of Letters;
  - (b) whether the request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the requested Authority;
  - (c) whether broadly equivalent assistance would be available from the requesting Authority;
  - (d) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Authority's functions;
  - (e) whether it would be otherwise contrary to the public interest or the interest of the requested Authority's jurisdiction to give the assistance sought;
  - (f) whether the communication of information might adversely

affect the security or public policy of the requested Authority;

(g) if the request for assistance is for the purpose of actual or possible enforcement action, the further matter set out in clause 2 of Appendix 3;

(h) any other matters specified by the laws and regulations of the requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and

(i) whether complying with the request may otherwise be prejudicial to the performance by the requested Authority of its functions.

13. The requested Authority may attach conditions to the use and disclosure of any information provided or documents produced under this Exchange of Letters.

14. The Authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 12 at the discretion of the requested Authority.

15. If the requested Authority believes that a request is not in accordance with this Exchange of Letters, taking into account the provisions of paragraph 12, it will promptly inform the requesting Authority of the reasons for its refusal.

#### Enforcement Matters

16. The further provisions set out in Appendix 3 will apply in relation to actual or possible enforcement matters.

#### Costs

17. If the cost of fulfilling a request is likely to be substantial, the requested Authority may, in return for acknowledging that it will give assistance under this Exchange of Letters, require the requesting Authority to make a contribution to costs.

## Confidentiality

18. The assistance or information will be provided under this Exchange of Letters by the Authorities for the purposes of assisting each other in the performance of their regulatory functions relevant to the scope of this Exchange of Letters. To the extent permitted by laws and regulations, each Authority will keep confidential:
- (a) any request for information made under the Exchange of Letters;
  - (b) any matter arising in the course of its operation; and
  - (c) any information passed under this Exchange of Letters.
19. The requesting Authority will endeavour to comply with any restrictions or conditions on the use of information that are mutually determined when the information is provided.
20. The requesting Authority will notify the requested Authority if it proposes to disclose information provided under this Exchange of Letters to a permitted onward recipient. Subject to paragraph 21, the requesting Authority will obtain the prior written consent of the requested Authority to disclose information to a person other than a permitted onward recipient. In all cases, the requesting Authority will obtain an undertaking from the relevant third party (including a permitted onward recipient) that it will keep the information provided by the requesting Authority confidential in accordance with the terms of this Exchange of Letters.
21. Where compelled by law or a court order to disclose information received under this Exchange of Letters, the Authority receiving the demand will promptly notify the Authority that supplied the information of the demand. If required by the Authority that supplied the information, the other Authority will assert such appropriate legal exemptions or privileges with respect to that information as may be available or otherwise seek to preserve the confidentiality of the information.
22. Where the requesting Authority intends to use the information

furnished for any purpose other than for which it was provided, the requesting Authority must obtain the prior written consent of the requested Authority. If the requested Authority consents to the use of the information for other purposes it may attach conditions to the use of the information. If the requested Authority does not consent to the use of information for purposes other than for which it was provided, the Authorities will discuss the reasons for the refusal and the circumstances in, or conditions under, which the use of the information might otherwise be allowed.

#### Consultation

23. The Authorities will keep the operation of this Exchange of Letters under review and will consult when necessary with a view to improving its operation and resolving any matters.

24. Where the specific conduct set out in the request for assistance may constitute a breach of the laws and regulations in both the jurisdiction of the requesting and the requested Authorities, the relevant Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

#### Contact Points

25. All initial communications between the Authorities should be between the points of contact in Appendix 2 unless otherwise mutually determined.

#### Commencement and Termination

26. This Exchange of Letters will take effect between the Authorities from the date on which both Authorities receive a letter acknowledging the consent of the other Authority to the Exchange and will continue to have effect unless terminated by either Authority giving 30 days advance written notice to the other Authority. If either Authority gives such notice, this Exchange of Letters will continue to have effect



with respect to all requests that were made before the effective date of notification until the requesting Authority terminates the matter for which assistance was requested.

27. After termination, paragraphs 18 to 22 shall continue to apply to any information provided under this Exchange of Letters.