

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE NATIONAL BANK OF SERBIA

AND

THE BANKING, FINANCE AND INSURANCE COMMISSION (BELGIUM)

CONCERNING MUTUAL COOPERATION

I. Purpose:

1. The National Bank of Serbia (NBS) and the Banking, Finance and Insurance Commission (CBFA) (collectively "the Authorities") have reached the following understanding regarding arrangements for sharing information in order to facilitate the performance of their respective duties and to promote the safe and sound functioning of supervised institutions with cross-borders establishments within their respective territories.
2. The Authorities hereby express their willingness to cooperate on the basis of mutual trust and understanding and agree to base their cooperation in the area of supervision of supervised institutions on the principles and procedures outlined in this Memorandum of Understanding. They undertake to notify each other and share relevant information in a prompt and timely manner regarding any material supervisory concerns in respect of a cross border establishment as defined in III. (c) below.

II. The Authorities:

3. The NBS is the central bank of the Republic of Serbia and, as such, its main responsibilities are the protection of price stability and the maintenance of financial stability. The NBS, in carrying out its responsibilities, acts as an autonomous and independent institution. The supervisory function of the NBS is aimed at monitoring solvency and legal grounding of operations performed by commercial banks and insurance, leasing and voluntary pension fund management companies.
4. The CBFA is 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 the institutions as defined in III. (a) below. Those institutions are licensed by the CBFA pursuant to the Law of 9 July 1975 on the supervision of insurance undertakings and to the Law of 22 March 1993 on the legal status and supervision of credit institutions. 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 III. (a) below with anti-money laundering and counter-terrorism financing obligations.
5. The Authorities agree that all acts of cooperation derived from this Memorandum will be carried out in accordance with the applicable legislation of each jurisdiction and subject to the principle of reciprocity.

III. Definitions:

For the purposes of this Memorandum Of Understanding:

- (a) 'supervised institution' means a credit institution, an insurance company, a financial holding company or an insurance holding company supervised by one of the Authorities.
- (b) 'credit institution' means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its account. A 'bank' is a credit institution;
- (c) 'cross border establishment' means a branch or a subsidiary of a bank, or an insurance company operating on the territory of one Authority, of which the parent company is established on the territory of the other Authority;
- (d) 'subsidiary' means an undertaking controlled by a holding or parent company, and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence. All subsidiaries of a subsidiary shall also be considered subsidiaries of the undertaking that is their original parent.
- (e) 'branch' means a legally dependent unit of a bank or insurance company which has its seat within the territory of one of the Authorities and is established within the territory of the other Authority;
- (f) 'financial holding company' means a financial institution, the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, at least one of such subsidiaries being a credit institution;
- (g) 'insurance company' means a direct life, non-life, insurance or reinsurance¹ undertaking which has received authorization in accordance with its activities;
- (h) 'insurance holding company' means a parent undertaking the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings or reinsurance undertakings², one at least of such subsidiary undertakings being an insurance undertaking;
- (i) 'host country' means the country in which a cross-border establishment is established;
- (j) 'home country' means the country in which the supervised institution's seat is located.

IV. Scope and General Principles:

6. The provisions of this Memorandum of Understanding are not intended to create legally binding obligations or to supersede domestic laws. Nothing in this Memorandum of Understanding shall affect the competence of the Authorities under their respective national laws, European Community law or supervisory practices, or shall supersede, alter or create any arrangement between either Authority and other entities with respect to sharing information.

¹ 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.

² *Ibidem.*

Without prejudice to their national legislation, the NBS and the CBFA recognize that closer cooperation during the authorization process of a cross-border establishment, as well as in the efficient supervision of the ongoing activities of a cross-border supervised institution, would be mutually advantageous.

7. The Authorities recognize the importance and desirability of mutual assistance and exchange of information. Information will 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 state 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. 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.

9. Where one Authority has information that will assist the other Authority in the performance of its regulatory and supervisory functions, the former may provide such information or arrange for it to be provided, on a voluntary basis even though the other authority has made no request.

V. Sharing of information:

10. Information sharing shall include all relevant facts pertaining to the licensing process, such as for example:

(a) the application for authorization to establish a supervised institution as well as the acquisition of shares in a supervised institution, and in particular cases, the ownership structure of the controlling-undertaking, and decisions taken by the other Authority modifying such authorization.

(b) the revocation of an authorization.

(c) Upon request, the home country Authority will inform the host country Authority whether the applicant supervised institution is compliant 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. Likewise, the home country Authority will inform the host country Authority of the amount of the said institution's own funds and solvency ratios. The home country Authority will also, upon request, assist the host country Authority with verifying or supplementing any information submitted by the applicant.

- (d) Upon request, the home country Authority will inform the host country Authority of 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 country Authority will inform the home country Authority of the nature of its regulatory system and the extent to which it will supervise the cross border establishment of the applicant institution and

- (e) to the extent permitted by law, the Authorities will share information on the fitness and propriety of prospective managers of a cross-border establishment.

Furthermore, for entities which are authorized neither in Serbia nor in Belgium and which apply for a license with one of the Authorities, the NBS 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.

11. In connection with the ongoing supervision of their cross-border establishments, the Authorities will:

- (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 of 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. 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.

VI. On-site inspections:

12. The Authorities recognize that cooperation is particularly useful in assisting each other in carrying out on-site inspections of cross-border establishments in the host country. Prior to deciding whether an on-site inspection is necessary the home country Authority may review any relevant inspection reports prepared by the host country Authority.

Host country Authority supervisors may be present during an inspection conducted by home country Authority supervisors. Following the inspection an exchange of views will take place between the inspection team and the host Authority, and the reports of the on-site inspection will be exchanged between Authorities for informative purposes.

13. The home country Authority will notify the host country Authority in advance of *planned*

inspections in a cross-border establishment to be conducted either by their own staff or through commissioned auditors.

The notification shall comprise the following information:

- the scope of the examination,
- the name of the branch and/or subsidiary,
- the name of the inspectors/auditors.

The host country Authority will, to the extent reasonable, allow the home country Authority to conduct on-site inspections with its assistance. At the discretion of the host country Authority and in accordance with the applicable laws in each jurisdiction, on-site inspections of subsidiaries may be carried out independently by the home country Authority or jointly with other supervisors. In that case they may be present during an inspection conducted by the host country Authority.

VII. Protection of information:

14. The Authorities recognize that mutual trust can be achieved only if exchanges of information can flow with confidence in both directions. Therefore, the Authorities agree to take all possible steps to comply with the obligation of professional secrecy and confidentiality protecting the information received by all past and present employees of both Authorities who received confidential information from the other Authority 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 shall be marked with the following clause: "Covered by professional secrecy".

15. 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 with whom the information originated; the latter Authority may attach conditions to the release of information, including that the third party recipient be bound to keep the information confidential.

16. Each Authority will promptly inform the other if it is compelled to disclose any information it has obtained, as well as the conditions surrounding the release of said information. In particular, each Authority shall inform the other if it has received a legally enforceable request for information obtained from the other Authority, including a request from a third party supervisory authority, or for information acquired in the course of an on-site inspection in the other Authority's jurisdiction, pursuant to which it is obliged by law to disclose such information.

17. If so required by one Authority, the other Authority will use its best endeavours to preserve the secrecy and the confidentiality of the information to the extent permitted by law.

VIII. Cooperation on financial crime:

18. The Authorities agree to cooperate closely if they identify suspected financial crime in supervised institutions and financial transactions. For the purposes of this agreement, 'financial crimes' are, in particular: money laundering and the financing of terrorism. They also include unauthorised banking and insurance business.

19. To the extent allowed by the law, the Authorities will share their financial information on financial crime concerning the relevant supervised institutions which carry out cross-border activities under the other jurisdiction, or which might affect the other jurisdiction. They may pass on received information for regulatory or law enforcement purposes, with the prior consent of the other authority, to other authorities under national jurisdiction.

IX. Ongoing Coordination:

20. 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 Authority would benefit from input and support by the other in order to reinforce sound supervisory practices in both countries.

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

22. The Authorities shall cover their own costs of inspection.

X. Final Provisions:

23. This Memorandum of Understanding shall continue indefinitely, subject to modification with the mutual consent of the Authorities or termination by either party with 30 days' advance notice in writing. However, the final outstanding request for assistance made prior to such notice shall be honoured by the Authorities under the conditions laid down in this Memorandum of Understanding. The confidentiality provisions herein shall continue, after termination, to apply to any information provided under this Memorandum of Understanding.

24. To facilitate practical co-operation, the Authorities, after this agreement enters into force, will exchange a written list with contact persons for the exchange of information (names, positions, telephone, fax and e-mail connection). They will notify each other about any changes regarding appointed contact persons.

25. This Memorandum of Understanding is written in English in duplicate, both copies being equally authentic and each party obtaining a copy.

26. This Memorandum of Understanding comes into force as of the date it is signed by both parties.

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On behalf of:

The Banking, Finance and Insurance Commission (Belgium)

By:

Jean-Paul SERVAIS, Chairman

Signed in:

Brussels

Dated:

4 July 2008

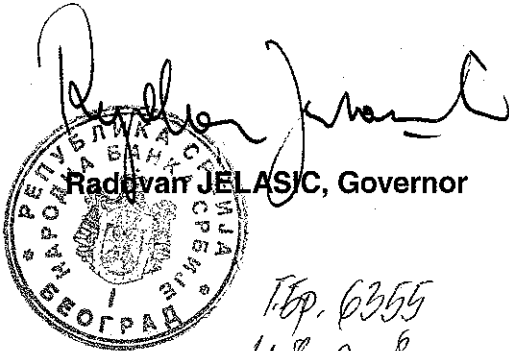
The National Bank of Serbia (Serbia);

By:

Radevan JELASIC, Governor

Signed in:

Dated:



16p. 6355
4.8.2008.