



Memorandum of Understanding concerning co-operation in insurance supervision

between

The Australian Prudential Regulation Authority (APRA)

as one party,

and

**New Caledonia,
Represented by the President of the government of New Caledonia**

as the other,

(together, “the Authorities”)

Background

1. This Memorandum of Understanding (MOU) sets out a framework for co-operation between the Authorities in areas of common interest where co-operation is essential for the effective and efficient performance of their respective financial regulation functions.
2. This MOU is a statement of intent and does not create any legally binding obligations on the Authorities.
3. This MoU does not affect the ability of the Authorities to otherwise request:
 - (a) documents, information or assistance from each other, or
 - (b) documents, information or evidence from individualsunder relevant laws in their respective jurisdictions, such as, in Australia, section 6 of the Mutual Assistance in Business Regulation Act 1992 and in New Caledonia, book 3 of the Insurance Code as applicable in New Caledonia.

4. For the purpose of this MOU:

- **Cross-border Establishment** means a branch, subsidiary or any other insurance entity or group within one jurisdiction which falls under the consolidated or group-wide supervision (or prospective supervision) responsibility of the other jurisdiction. These establishments include those where APRA and the Government of New Caledonia are both Host-country Authorities.
- **Cross-border Activity** means an insurance business undertaking in the jurisdiction of the Host-country Authority, by an insurance entity from the jurisdiction of the Home-Country Authority.
- **Host-country Authority** means the Authority which supervises a branch, representative office, subsidiary or sub-group of an entity (the parent entity) which is supervised in another country.
- **Home-country Authority** means the Authority which supervises the parent entity.
- **Jurisdiction** means the territory of the country concerned in the context of this MOU.

The Authorities

5. 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), insurance/reinsurance companies, friendly societies and superannuation funds authorised to operate in Australia.
6. The Government of New Caledonia is the regulatory authority for insurance in New Caledonia under Article Lp322-1 of the Insurance Code as applicable in New Caledonia.

General Principles

7. The Authorities expect, within the framework of this MOU, to provide each other with all reasonable assistance to promote the safe and sound functioning of entities regulated by the Authorities, subject to domestic laws and the Authorities' overall policies. This MOU is entered into by the Government of New Caledonia in accordance with article Lp324-1 of the Insurance Code as applicable in New Caledonia.
8. The Authorities expect that requests for assistance or information will be made in writing by designated staff members of the Authorities whom the Authorities may nominate at any time as their respective contact officers for the purpose of sharing information under this MOU.

Requests for assistance or information will be addressed to the Authorities' contact persons named in Annexure A. However, where the Authorities perceive a need for expedited action, the Authorities may make a request for information in any form, but should subsequently confirm the request in writing, within 10 business days. The Authorities will endeavour to provide information to each other as quickly as possible.

9. The Authorities recognise that the provision of information may be denied on the grounds of national security or when disclosure would interfere with an ongoing investigation. Where a request for information is denied, the Authority that made the request expects that it will be provided with the reasons for not providing the information. Each Authority may impose conditions on the use of information provided to the other Authority.
10. The Authorities expect each other to mark all documents received under this MOU, "CONFIDENTIAL - PROVIDED UNDER MEMORANDUM OF UNDERSTANDING BETWEEN APRA AND NEW CALEDONIA".

Confidentiality

11. The Authorities will endeavour to preserve the confidentiality of the information received under this MOU. In this regard, staff members of the Authorities will hold confidential all information obtained in the course of their duties. Any confidential information received from either of the Authorities is to be used exclusively for lawful supervisory purposes.
12. An Authority may disclose information received from the other Authority under this MOU to a third party in the following circumstances:
 - (a) where the Authority is legally compelled to do so, for example in Australia to a Royal Commission and, in New Caledonia to a court in the context of criminal proceedings;
 - (b) where the Authority receives a legally enforceable demand, for example in application of the relevant laws in force in Australia and New Caledonia on freedom of information; and
 - (c) in other circumstances permitted by law.
13. When an Authority is legally compelled to disclose information provided under this MOU to a third party, the Authority which is under compulsion is expected to promptly notify the other Authority, indicating what information it is compelled to disclose and the circumstances surrounding its release. The Authorities will endeavour to preserve the confidentiality of the information to the extent permitted by law, if requested to do so.

14. Where an Authority wishes to disclose information received under this MOU to a third party, but is not compelled to do so, it is expected to notify the other Authority to obtain its consent. It will not disclose the information if consent is refused. Where consent is obtained, the Authority disclosing the information will impose on the third party any conditions which have been made by the other Authority concerning the use of that information. In any event, as far as possible, the party disclosing the information will impose a condition on the third party that it keep the information confidential, and that it will not further disclose the information without first obtaining consent.

Cross-Border Establishments

15. The Host-country Authority is expected to notify the Home-country Authority without delay of applications for approval to establish a Cross-border Establishment to undertake a Cross-border Activity or to make an acquisition in the jurisdiction of the Host-country Authority.
16. Upon request by the Host-country Authority, the Home-country Authority is expected to inform the Host-country Authority whether the applicant entity carries out its activity in compliance with the important provisions of the laws and regulations administered by the Home-country Authority and whether the entity may be expected to manage the Cross-border Establishment or the Cross-border Activity in an orderly manner, given the Home-country Authority's knowledge of the entity's administrative structure and internal controls. Upon written request from the Host-country Authority, the Home-country Authority is expected to provide in writing an attestation to the solvency of the entity on a given date. The Home-country Authority is also expected, upon request, to assist the Host-country Authority by verifying or supplementing any information submitted with respect to the host country entity.
17. Upon request, the Home-country Authority is expected to inform the Host-country Authority about the nature of its regulatory system and the extent to which it will conduct consolidated or group-wide supervision over the applicant entity. Similarly, the Host-country Authority is expected to indicate the scope of its supervision and indicate any specific features that might give rise to the need for special arrangements.
18. To the extent permitted by law, the Authorities expect to share available information on the fitness and propriety of prospective directors, managers and relevant shareholders of a Cross-border Establishment.
19. The Home-country Authority will be allowed to conduct on-site inspections of Cross-border Establishments.

20. Before deciding whether an on-site inspection is necessary, the Home-country Authority may request and review any relevant examination or other supervisory reports prepared by the Host-country Authority.
21. The Home-country Authority is expected to notify the Host-country Authority of plans to inspect or 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 inspection or examination. The Host-country Authority reserves the right to accompany the Home-country Authority on such an inspection or attend any examination. The Authorities expect to keep each other informed on the results of any inspections in a timely manner. If the parent entity has been inspected along with its Cross-border Establishment in the other country, the Home-country Authority is expected to provide the Host-country Authority with a summary report on material findings that are relevant to the Cross-border Establishment.

Ongoing Supervision

22. The Authorities intend to provide relevant information to each other with regard to their involvement in insurance supervision, in a timely and reasonable manner particularly in the case of deterioration in the position of the entity. The Authorities expect to inform each other of material administrative penalties imposed, or other formal enforcement action taken against any Cross-border Establishment, its management or, in cases of systemic impact, its shareholders. The Authorities expect that they will give prior notification of such action to each other, as far as it is practicable and subject to applicable laws.
23. The Authorities intend to co-operate closely when either Authority identifies suspected financial crime activities conducted by supervised entities or in transactions. Financial crimes include money laundering, unauthorised insurance business and all other breaches of the laws governing insurance entities that are regulated by either Authority. It is noted that money laundering falls within the regulatory responsibilities of the ACPR, the French national supervisory authority and not New Caledonia.

Regulatory Policy Development

24. The Authorities expect to respond to each other's requests for information on their respective national regulatory systems and inform each other about major changes, including those that have a significant bearing on the activities of Cross-border Establishments.

General

25. The Authorities expect to conduct meetings as often as appropriate to discuss issues concerning insurance entities or groups that maintain Cross-border Establishments and to review the effectiveness of cooperation arrangements. The Authorities also intend, where practical, to promote their co-operation by visits for information purposes.

Unless otherwise notified, contact will be between the principal contact persons set out in Annexure A.

26. Each Authority expects to bear its own expenses incurred in the implementation of this MOU. If it appears that an Authority is likely to incur substantial costs in responding to a particular request for information, the Authority may approach the other Authority with a view to negotiating a cost-sharing arrangement in relation to the provision of that information.

On behalf of:

The Australian Prudential Regulation Authority

By .

Geoff Summerhayes

Member

Dated: 9th May 2017

On behalf of:

New Caledonia

By .

Philippe Germain

President of the Government

Dated: 30 June 2017