

Memorandum of Understanding
between
the Central Bank of the Russian Federation
(the Bank of Russia)
and
the Commission de Surveillance du Secteur Financier,
Luxembourg (CSSF)

The Central Bank of the Russian Federation (Bank of Russia) and the CSSF, hereinafter referred to as the “Supervisory Authorities”, have reached an understanding on the need to exchange information for the effective fulfillment of their functions and assist the reliability and stability of banking systems in their countries. This understanding also meets the Basel Committee recommendations on the principles of conducting consolidated and comprehensive supervision and co-operation between Banking Supervisory Authorities.

1. The Powers of the Supervisory Authorities

1.1. The Russian Federation.

Under the legislation of the Russian Federation, the Central Bank of the Russian Federation (the Bank of Russia) is a body of banking regulation and banking supervision. It constantly monitors the compliance by credit institutions and banking groups with banking legislation, the Bank of Russia’s regulations and mandatory standards. To fulfill its regulatory and supervisory functions, the Bank of the Russia conducts on-site inspections of credit institutions and their branches, sends them compulsory prescriptions to eliminate the shortcomings discovered in their work and takes measures to credit institutions established by the Federal Law on the Central Bank of the Russian Federation (the Bank of Russia).

Under the legislation of the Russian Federation, the reporting of credit institutions, bank groups, and bank holdings is submitted to the Bank of Russia.

1.2. Luxembourg

The Commission de Surveillance du Secteur Financier (CSSF) of Luxembourg is a public law entity, with administrative and financial autonomy, established by the law of 23 December 1998. The CSSF is the competent authority for the prudential supervision of the entire Luxembourg financial sector, except for the insurance sector. The CSSF is also legally responsible for the regulation and supervision of the securities market.

The CSSF exercises its prudential supervision powers solely in the public interest and ensures respect for the execution of international agreements and European Union law applying to the domains falling within its sphere of competence. The CSSF ensures that the persons subject to its supervision comply with the laws and regulations relating to the financial sector and respect the professional obligations by which they are bound.

2. For the Purposes of this Memorandum:

2.1. “Supervised Institution(s)”: a legal entity authorised to conduct banking operations, whose activities are subject to licensing and supervision in accordance with the legislation of the Russian Federation or of Luxembourg.

2.1.1. In the Russian Federation:

Credit institution is a legal entity which, for the purpose of deriving profit as the principal objective of its activity, has the right on the basis of a special permission (license) of the Bank of Russia to conduct banking operations stipulated by the Federal Law on Banks and Banking Activities. A credit institution is established on the basis of any form of ownership as a business entity.

Bank is a credit institution that has the exclusive right to conduct the following banking operations in their entirety: to take funds on deposit from private individuals and legal entities, lend such funds on its own behalf and at its own expense on the condition that they are returned after a specified period of time with an interest, open and keep individual and corporate bank accounts.

Non-bank credit institution is a credit institution that has the right to conduct individual banking operations stipulated by the Federal Law on Banks and Banking

Activities. The permissible combinations of banking operations are established for non-bank credit institutions by the Bank of Russia.

2.2.2. In Luxembourg

A “credit institution” means a credit institution as defined in Article 4(1) of the European Directive 2006/48/EC. In Luxembourg, this refers to legal persons whose activities consist in receiving from the public deposits or other repayable funds and in granting credits for their own account, as well as persons considered as credit institutions under Part I, Chapter I of the law of 5 April 1993 on the financial sector. The persons whose activities consist in receiving deposits or other repayable funds from the public and in granting credits for their own account may be called either credit institutions or banks.

2.2. “Supervised Parent Institution(s)”: a Supervised Institution incorporated in one of the states, which has a Cross-Border Establishment (a branch, a subsidiary or a representative office), located in the other state.

2.3. “Cross-Border Establishment(s)”:

2.3.1. The Russian Federation

In the Russian Federation, foreign banks may participate in the authorised capital of credit institutions and establish subsidiaries, whose activities are subject to licensing under the Russian Federation laws, and also open representative offices.

Under the Russian Federation legislation:

A subsidiary credit institution is a legal entity in which another credit institution by force of majority interest in its authorised capital or in accordance with an agreement concluded between them or otherwise can determine the decisions taken by the subsidiary credit institution.

A representative office of a credit institution is a separate division thereof, situated outside the seat of the credit institution that represents and protects its interests. A representative office of a credit institution has no right to conduct banking operations. A representative office of a credit institution is not a legal entity and conducts its activities on the basis of the regulations established by the credit institution that created it.

2.3.2. Luxembourg

In Luxembourg, foreign banks may participate in the authorized capital of credit institutions, establish subsidiaries and open representative offices provided the legal suitability criteria applying to shareholders of credit institutions are met.

Under the Luxembourg legislation:

A “subsidiary” means a subsidiary undertaking in respect of which rights are owned as follows:

(a) a parent undertaking has a majority of shareholders’ or members’ voting rights of another undertaking, or

(b) a parent undertaking has the right to appoint or remove the majority of the members of the administrative management or supervisory body of another undertaking and is at the same time a shareholder or member of that undertaking, or

(c) a parent undertaking has the right to exercise a dominant influence over an undertaking of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that undertaking permits being subject to such contracts or provisions, or

(d) a parent undertaking is a shareholder or member of an undertaking and controls alone, pursuant to an agreement concluded with other shareholders or members of this undertaking, the majority of the voting rights of the shareholders and members of the latter, or

(e) a parent undertaking may exercise or actually exercises a dominant influence over another undertaking, or

(f) a parent undertaking is placed under management on a unified basis with another undertaking.

As regards representative offices established in Luxembourg by foreign credit institutions (“information offices”), their function is restricted to collecting and providing information of a general nature, excluding all business on behalf of its promoters and in particular any commercial or other intervention in banking activities.

The status of an information office is only granted to entities fulfilling the conditions for obtaining a banking license in Luxembourg.

2.4. “Home country”: the country in which a Supervised Parent Institution is registered.

2.5. “Host country”: the country in which a Cross-Border Establishment is registered.

2.6. “On-Site Inspection(s)”: inspection(s) carried out at a Cross-Border Establishment by duly authorised representatives of the Home Supervisor.

3. Exchange of Information

3.1. To ensure and enhance the efficiency of supervision over Supervised Institutions and their Cross-border Establishments, the Supervisory Authorities express their wish to co-operate and exchange information in the following areas: licensing, on-going supervision, including on-site inspections, owner control, anti-money laundering and counter terrorist financing in the competence of the Supervisory Authorities.

The Supervisory Authorities shall exchange information on the state and development of the national banking sector, the principal banking supervision standards and requirements and significant changes therein.

3.2. In the Russian Federation the procedure of information-sharing with foreign supervisory authorities is regulated by the Federal Law “On the Central Bank of the Russian Federation (Bank of Russia)”. According to Article 51 of the Federal Law “On the Central Bank of the Russian Federation (Bank of Russia)” the Bank of Russia is entitled to inquire the central bank and the banking supervision authority of a foreign state for information and documents received from credit institutions in the course of the discharge of the supervisory functions, and also has the right to submit to the banking supervision authority of a foreign state the above information or documents which do not contain data on the operations of credit institutions and of their clients, under the condition that the said banking supervision authority guarantees the regime for the preservation of information that corresponds to the demands for the provision of the security of information made on the Bank of Russia which are

established by the legislation of the Russian Federation. As for the information and the documents received from the central banks and banking supervisory bodies of foreign states, the Bank of Russia is obliged to meet the requirements for revealing information and for submitting the documents established by the legislation of the Russian Federation, with an account for the requirements established by the legislation of these foreign states.

3.3. In Luxembourg, the framework for exchange of information between the CSSF and supervisory authorities from third countries is provided in particular by Articles 44 (“Professional secrecy of the CSSF”) and by Article 44-3 (“Exchange of information of the CSSF with third countries”) of the law of 5 April 1993 on the financial sector.

3.4. Co-operation within the framework of this Memorandum shall be conducted at the initiative of a Supervisory Authority on the basis of a request for assistance.

3.5. A request for assistance shall be made in writing. Any type of communication facilities may be used to transmit a request.

3.6. Assistance within the framework of this Memorandum may be refused wholly or in part if the requested Supervisory Authority believes that the fulfillment of the request contravenes its national legislation or runs counter to the interests of the national security. In this case, the requesting Supervisory Authority shall be notified in writing and given the reasons for the refusal.

3.7. Each Supervisory Authority shall do everything to ensure a prompt and fullest possible reply to the request of the other Supervisory Authority or it shall notify the latter about the circumstances that prevent or delay the fulfillment of the request.

3.8. Each Supervisory Authority shall bear the expenses that may arise in implementing this Memorandum unless a different procedure is agreed upon.

4. Ensuring the Confidentiality of Information

4.1. The Supervisory Authorities shall take appropriate measures to ensure the confidentiality of information or documents in keeping, using and passing it to each

other, including the transmission of information by any type of communication facilities.

4.2. Confidential information provided within the framework of this Memorandum may not be used without the consent of the Supervisory Authority that provided it for purposes other than those for which it was requested and provided.

4.3. Confidential information or documents may be passed to a third party in each particular case if there is a written permission to do so from the Supervisory Authority that has provided confidential information, except for the cases, when obligation to provide information is stipulated by law. In such cases, the Supervisory Authority shall notify the Supervisory Authority that has provided the information prior to passing it to a third party and also indicate what information it is obliged to release and the circumstances surrounding its release.

4.4. Should this Memorandum be terminated, the supervisory information received within the framework of this Memorandum shall remain confidential.

5. Licensing

5.1. Application of a Supervised Parent Institution to the Host Supervisor regarding issuing of license (permission) on opening of a Cross-border Establishment (hereinafter – “application”) is considered within the time periods and in compliance with the requirements set by the national legislation.

5.2. The Host Supervisor shall inform the Home Supervisor in writing about the results of consideration of the application.

5.3. The Home Supervisor shall inform the Host Supervisor on his request whether the applicant complies with the national legislation, as well as about the state of corporate governance, risk management and internal control system of the applicant Supervised Institution. The Home Supervisor informs the Host Supervisor on the compliance with qualification requirements of the prospective managers of the Cross-Border Establishment.

6. Co-operation concerning owner control

6.1. The Banking Supervisory Authorities shall consult before granting permission with regard to the acquisition of shares (stakes) by a legal entity or private

individual or a group of legal entities and (or) private individuals in a Supervised Institution registered in the other country, if there is such a requirement in the national legislation.

For the purposes of this Memorandum, an acquisition signifies receiving in ownership (or in trust management) by a person (or a group of persons) of a stake in the capital of a Supervised Institution registered in the Russian Federation or in Luxembourg, of a size that will require, under the national legislation, preliminary agreement with the respective Supervisory Authority.

6.2. The Supervisory authorities shall also exchange all possible information necessary for identification of beneficial owners, i.e. private individuals and legal entities, which can directly or indirectly influence decisions taken by management bodies of Supervised Institutions which apply for a license on opening a Cross-border Establishment and/or conduct cross-border operations with Supervised Institutions in the Russian Federation or Luxembourg, respectively, as well as beneficial owners of Supervised Parent Institutions having Cross-border Establishments in the Russian Federation or Luxembourg. If the Supervisory Authorities do not have such information, they shall take all the necessary measures to obtain it.

7. Co-operation in off-site supervision of Cross-Border Establishments

7.1. The Supervisory Authorities will inform each other about concerns about the financial soundness of Supervised Parent Institutions having Cross-Border Establishments in the respective other country. They will also notify each other of actions which they have taken in respect of such a Cross-Border Establishment as Host Supervisor or the Supervised Parent Institution as Home Supervisor if the information in their judgement is likely to be important to the other Supervisory Authority to assist that other Supervisory Authority in the exercise of its functions.

7.2. The Supervisory Authorities will discuss with each other any significant information on Supervised Parent Institutions and Cross-Border Establishments in the other country which is likely to be relevant to the other Supervisory Authority to assist that other Supervisory Authority in the exercise of its functions. Relevant matters are in particular: concerns about the financial soundness of a Supervised Parent Institution or a Cross-Border Establishment, concerns relating to banking supervision both on a

solo and consolidated basis, concerns arising from the results of inspections, or reports from and meetings or other communications with a Supervised Parent Institution or a Cross-Border Establishment, concerns arising from late and/or unreliable reporting.

8. Co-operation in Conducting On-site Inspections

8.1. The Supervisory Authorities agree that co-operation is useful in assisting each other in carrying out On-Site Inspections of Cross-Border Establishments. The Supervisory Authorities will provide full support to each other in such inspections, which will be carried out in the framework of the legislation of both the Home and the Host Supervisors.

8.2. The Supervisory Authorities will notify each other in advance about the intention to conduct an On-Site Inspection, giving the names of the inspectors, the purpose of the inspection and its expected duration.

8.3. In the Russian Federation:

The Home Supervisor shall regulate on its own the relations with Cross-Border Establishments in respect to the access of his authorized representatives for the purpose of On-Site Inspections. In this regard, the Host Supervisor will not impede the Home Supervisor's free access to the Cross-border Establishment.

In Luxembourg:

The Home Supervisor must invite the Host Supervisor to attend the On-Site inspection in the Host Country and the Host Country may attend as it sees fit.

8.4. The Supervisory Authorities shall inform each other on the results of the On-Site Inspections in the framework of the national legislation.

9. Co-operation on Anti-Money Laundering and Counter Terrorist Financing.

The Supervisory Authorities to fulfill their supervision duties shall exchange the information:

- on national laws and regulations in the field of anti-money laundering and counter terrorist financing;
- on the practice of identifying and scrutinising clients and beneficiaries;

- on the observance by Supervised Parent Institutions and their Cross-border Establishments of the national legislation in the field of anti-money laundering and counter terrorist financing;

- on typical money laundering and terrorist financing schemes.

10. Other Provisions

10.1. If necessary, the Supervisory Authorities shall meet to discuss and settle matters relating to supervision of Supervised Parent Institutions and Cross-border Establishments. The issues relating to the implementation of this Memorandum may also be discussed at such meetings.

10.2. To ensure the practical implementation of co-operation after this Memorandum comes into force, the Supervisory Authorities shall exchange lists of contact persons (with full names, job titles, telephone and fax numbers and e-mail addresses).

10.3. Information on the Bank of Russia, banking system, laws and regulations of the Russian Federation may be found on the Bank of Russia website at www.cbr.ru.

Information on the CSSF, banking system, laws and regulations of the Foreign State may be found on the CSSF website at www.cssf.lu.

The Bank of Russia and the CSSF shall not object to placing this Memorandum on their websites.

10.4. This Memorandum shall come into force as of its signing and will remain effective until one of the Supervisory Authorities notifies in advance the other in writing about its decision to terminate it. In this case, this Memorandum shall remain in effect for 30 days after the notification date. Requests for assistance made before that date shall be fulfilled by the Supervisory Authorities in compliance with the terms and conditions of this Memorandum.

10.5. This Memorandum is done in two copies, in the English language.

For the Central Bank of
the Russian Federation
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the Russian Federation

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For the CSSF
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Director General of the CSSF

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