



EIOPA-BoS-13/102

29 August 2013

**MULTILATERAL MEMORANDUM OF UNDERSTANDING (MMoU) ON
SUPERVISORY COOPERATION AND EXCHANGE OF INFORMATION**

by and among

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| BERMUDA MONETARY AUTHORITY | EEA SUPERVISORY AUTHORITIES COMPETENT FOR INSURANCE SECTOR SUPERVISION |
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A. Signatory parties:

The Bermuda Monetary Authority:

1. The Bermuda Monetary Authority is the integrated regulator of the financial services sector in Bermuda. The BMA supervises, regulates and inspects financial institutions operating in or from the Jurisdiction. The Authority develops risk-based financial regulations that it applies to the supervision of Bermuda's banks, trust companies, investment businesses, investment funds, fund administrators, money service businesses, (re)insurance undertakings and credit unions. It also regulates the Bermuda Stock Exchange.
2. In addition to its supervisory functions the Authority issues Bermuda's national currency; manages exchange control transactions; assists other regulators in Bermuda with the detection and prevention of financial crime and advises the Government of Bermuda and public bodies on banking and other financial and monetary matters.

The European insurance supervisors:

3. For the purpose of this MMoU, the European Economic Area (EEA) insurance supervisors are the national authority or the national authorities empowered by law or regulation to supervise insurance or reinsurance undertakings (as per Directive 2009/138/EC – art. 13; par. 10)¹.
4. The EEA insurance supervisors are the following:

| No. | Country | Institution – EIOPA Member |
|-----|----------------|--|
| 1. | Austria | FMA - Finanzmarktaufsicht (Financial Market Authority) |
| 2. | Belgium | NBB - Nationale Bank van België (National Bank of Belgium) |
| 3. | Bulgaria | Комисия за Финансов Надзор (Financial Supervision Commission) |
| 4. | Croatia | HANFA - Hrvatska agencija za nadzor financijskih usluga (Croatian Financial Services Supervisory Agency) |
| 5. | Cyprus | Υπηρεσία Ελέγχου Ασφαλιστικών Εταιρειών Κύπρου (Cyprus Insurance Companies Control Service) |
| 6. | Czech Republic | CNB - Ceska Narodni Banka (Czech National Bank) |
| 7. | Denmark | FSA - Finanstilsynet (Danish FSA) |
| 8. | Estonia | Finantsinspektsioon (Estonia Financial Supervision Authority) |
| 9. | Finland | FIN-FSA - Finanssivalvonta (Finnish Financial Supervisory Authority) |
| 10. | France | ACPR - Autorité de Contrôle Prudentiel et de Résolution (Prudential Control Authority) |
| 11. | Germany | BaFin - Bundesanstalt für Finanzdienstleistungsaufsicht |

¹ Solvency II Directive: O.J. L, 15.1.2003, p.3

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| | | (Federal Financial Supervisory Authority) |
| 12. | Greece | Τράπεζα της Ελλάδος (Bank of Greece - Department of Private Insurance Supervision) |
| 13. | Hungary | HFSA - PÉNZÜGYI SZERVEZETEK ÁLLAMI FELÜGYELETE (Hungarian Financial Supervisory Authority) |
| 14. | Ireland | Central Bank of Ireland |
| 15. | Italy | IVASS – Istituto di Vigilanza sulle assicurazioni |
| 16. | Latvia | FCMC - Finanšu un Kapitāla Tirgus Komisija (Financial Capital Market Commission) |
| 17. | Lithuania | Lietuvos Bankas (Bank of Lithuania) |
| 18. | Luxembourg | Commissariat aux Assurances |
| 19. | Malta | MFSA - Malta Financial Services Authority |
| 20. | Netherlands | DNB - De Nederlandsche Bank (National Bank of Netherlands) |
| 21. | Poland | KNF - Komisja Nadzoru Finansowego (Polish Financial Supervision Authority) |
| 22. | Portugal | ISP - Instituto de Seguros de Portugal (Portuguese Insurance and Pension Fund Supervisory Authority) |
| 23. | Romania | ASF - Romanian Financial Supervisory Authority |
| 24. | Slovakia | NBS - Narodna Banka Slovenska (National Bank of Slovakia) |
| 25. | Slovenia | AZN - Agencija za Zavarovalni Nadzor (Insurance Supervision Agency) |
| 26. | Spain | Dirección General de Seguros y Fondos de Pensiones - Ministerio de Economía y Competitividad |
| 27. | Sweden | FI - Finansinspektionen (Financial Supervisory Authority) |
| 28. | United Kingdom | The Prudential Regulation Authority |
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| No. | Country | Institution – EIOPA Observer |
| 1. | Iceland | FME - Fjármálaeftirlitið (Financial Supervisory Authority) |
| 2. | Liechtenstein | FMA - Finanzmarktaufsicht (Financial Market Authority) |
| 3. | Norway | Finanstilsynet (Norwegian Financial Supervisory Authority) |

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| B. Operative Part: |
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a) *Definitions:*

5. In this MMoU, unless the context requires otherwise, the following definitions are applicable:

- a. **applicable laws, regulations and requirements** means any law, regulation or requirement applicable in Bermuda and/or in the EEA States, and where the context permits, includes:
 - i. Relevant EU legislation applicable to the insurance sector;
 - ii. Any law, regulation or requirement applicable in Bermuda or in the EEA State;
 - iii. Any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority.
- b. **Authorities** means the BMA and the EEA competent supervisory authorities, signatories of this MMoU;
- c. **(re)insurance undertaking** means a licensed legal entity which undertakes insurance or reinsurance business;
- d. **permitted onward recipient** means an agency or authority responsible for prosecuting, regulating or enforcing applicable laws, regulations and requirements falling within the area of responsibility of the Authorities;
- e. **person** means a natural person or a legal entity;
- f. **requested Authority** means an Authority to whom a request under this MMoU is addressed;
- g. **requesting Authority** means an Authority making a request under this MMoU.

6. The Authorities recognise that while in their laws, regulation and requirements they may define terms differently, requests for assistance will not be denied solely on the grounds of differences in the definitions used by the requesting and requested Authorities.

b) *Principles:*

- 7. The Authorities express, through this MMoU, their willingness to cooperate with each-other on the basis of mutual trust and understanding in the supervision of (re)insurance undertakings incorporated in BMA and in an EEA State.
- 8. The purpose of this MMoU is to establish a formal basis for co-operation between BMA and each EEA insurance supervisor, including the exchange of public and non-public information and investigative assistance. This is based on the understanding that equivalent obligations of professional secrecy apply to any person who receives information exchanged under this MMoU.
- 9. Supervisory cooperation under this MMoU is expected to serve the Authorities in discharging their duty to ensure adequate levels of policyholder protection and to promote the integrity, stability and efficiency of the (re)insurance industry in their respective countries.

10. The Authorities recognise the need and desirability of providing mutual assistance and exchanging information to assist each other in securing compliance with their respective laws, regulations and requirements. Nevertheless, the Authorities acknowledge that they may only provide information or mutual assistance under this MMoU if permitted or not prevented under applicable laws, regulations and requirements.
11. The MMoU does not modify or supersede any laws, regulations and requirements in force in, or applying in, BMA or the signatory EEA States. Nor does it create directly or indirectly any enforceable rights.
12. The Authorities agree to provide information or deal with requests for assistance under this MMoU in a timely manner.
13. The MMoU does not affect any arrangements under other MoUs or agreements.
14. Each Authority should establish a contact point for the implementation of this MMoU (see Annex 1). With the explicit consent of the national contact person, his/her data may be communicated to the other signatory Authorities through a contact list of all contact points. The Authorities update this information as necessary and inform EIOPA and the BMA accordingly. EIOPA subsequently updates the contact list and informs the EEA Authorities. EIOPA will process this data in accordance with the Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000².

c) Provision of unsolicited information:

15. The Authorities may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made.
16. The Authorities will make all reasonable efforts to inform each other about any event which has the potential to endanger the functioning/solvency of a (re)insurance undertaking and/or group of mutual interest or the overall stability of their respective insurance markets. Such events may include:
 - a. Incipient crisis;
 - b. Any serious violation of the laws and regulations applicable to (re)insurance undertakings under their supervision;
 - c. A decline in capital adequacy to below the minimal limit set by the law or the Authorities on solo- and/or group basis;
 - d. The carrying out of business which impairs the interest of policyholders or threatens the stability of the (re)insurance market;
 - e. Notification of relevant administrative measures or sanctions that the Authorities have imposed or on any other corrective actions they have applied in relation to relevant (re)insurance undertakings / groups;
 - f. Other material information of a serious nature.

d) Requests for assistance

17. If a request for information or other assistance is made, each Authority will use all reasonable efforts to provide assistance to the other, subject to its laws regulations, requirements and overall policy. Assistance may include:

² O.J. L 8, 12.01.2001

- a. Providing information in the possession of the requested Authority;
 - b. Confirming or verifying information provided 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;
 - e. Questioning or taking testimony of persons designated by the requesting authority;
 - f. Conducting inspections or examinations of (re)insurance undertakings;
 - g. To the extent permitted by the laws regulations and requirements applying to the requested Authority, permit the representatives of the requesting Authority to participate in the conduct of enquiries made by or on behalf of the requested Authority as per above examples.
18. In order to enhance the quality of supervisory cooperation and assistance, representatives of the Authorities may meet at the request of either Authority to discuss issues that concern (re)insurance undertakings relevant for their jurisdictions.

e) Procedure for requests

19. Requests for the provision of information or other assistance will be made in writing, or made orally and, unless otherwise agreed, confirmed in writing within ten business days, addressed to the appropriate appointed contact person(s) indicated in Annex 1. Annex 1 will be updated as necessary by each of the Authorities.
20. To facilitate the assistance, the requesting Authority should specify/provide:
- a. The information or other assistance requested (identity of persons, specific questions to be asked, etc.);
 - b. The urgency of the request for information or assistance;
 - c. The purpose for which the information or other assistance is sought;
 - d. If information is provided by the requesting Authority for confirmation or verification, the information and the kind of verification/confirmation sought;
 - e. If the request for assistance is for the purpose of actual or possible enforcement action, the following will be specified:
 - i. A description of the conduct or suspected conduct or any other circumstances that may constitute a valid reason for the request under this MMoU,
 - ii. Details of the law(s), regulation(s) or requirement(s) of the requesting Authority which is suspected to have been breached,
 - iii. Details of the link between any suspected breach of law(s), regulation(s) or requirement(s) and the regulatory, supervisory functions of the requesting Authority,
 - iv. The relevance of the requested information or assistance request to any suspected breach of law(s), regulation(s) or requirement(s) of the requesting Authority,

- v. Whether it is desired that, to the extent permitted by the laws applying to the requested Authority, any persons from the jurisdiction of the requesting Authority should be present during interviews which form part of an investigation, or the conduct of an inspection and whether it is desired that such persons should be permitted to undertake an active role – for example by participating in questioning of taking of evidence;
 - f. To whom, if anyone, onward disclosure of information provided to the requesting Authority is likely to be necessary and, in relation to onward disclosure to a person who is not a permitted onward recipient, the purpose such disclosure would serve;
 - g. Desired timeframe for the information to be provided by the Requested Authority;
 - h. Any other matters specified by the requested Authority and by the applicable laws, regulations and requirements in relation to the requesting Authority.
21. The requested information must be reasonably relevant to securing compliance with the law(s), regulation(s) or requirement(s) specified in the request.

f) Assessing requests

22. Each request for information or assistance will be assessed on a case-by-case basis by the requested Authority bearing in mind the overarching principles of this MMoU to determine whether assistance and/or information can be provided under the terms of this MMoU.
23. In deciding whether and to what extent to fulfil the request, the requested Authority may take into account:
- a. Whether the request conforms with this MMoU;
 - b. Whether the request involves the application/enforcement of a law, regulation or requirement which has no close parallel in the jurisdiction of the requested Authority;
 - c. Whether the provisions of assistance would be so burdensome as to disrupt the proper functioning of the requested Authority;
 - d. Whether it would be otherwise contrary to the public interest of the requested Authority's jurisdiction to give the assistance sought;
 - e. Any other matters specified by the laws, regulations and requirements of the requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness);
 - f. Whether complying with the request may otherwise be prejudicial to the performance by the requested Authority of its functions;
 - g. Whether the request would lead to the prosecution of, or taking of disciplinary action or other enforcement action against, a person who in the opinion of the requested Authority has already been appropriately dealt with in relation to the alleged breach in the subject matter of the request.

24. The requested Authority may, as a condition of agreeing that assistance is given under the MMoU, ask the requesting Authority to make a contribution to costs where the cost of a request is substantial.
25. The Authorities recognise that assistance and/or information may be denied in whole or in part for any of reasons, including for those mentioned above, at the discretion of the requested Authority. Where a request is denied in whole or part, the requested authority will inform the requesting authority in a timely manner, and whenever possible include the reasons for the refusal of the request.
26. The requested Authority may also place additional conditions on the use of the non-public information shared under this MMoU.

g) Confidentiality / Professional secrecy

27. Compliance with the obligation of professional secrecy by any person who receives information from the requested Authority in the course of their activities is a necessary condition of the successful cooperation under this MMoU.
28. Each Authority is liable in accordance with the relevant laws, regulations and requirements to keep confidential information related to requests made under this MMoU, the contents of such requests, and the information obtained pursuant to this MMoU as well as any related matters, in particular consultations between the two authorities.
29. The requesting Authority will not disclose any such information unless it is necessary for carrying out its supervisory responsibilities and will not disclose or pass on any non-public information to third parties without the prior written consent of the requested Authority.
30. Whenever the demand of the third party to receive information is legally enforceable, the requesting Authority will whenever legally possible inform the requested Authority of such demand prior to complying to that demand.
31. When the Requested authority so wishes, the requesting authority will use all reasonable legal means to resist such a demand or propose alternative means of complying to the request or demand.
32. Whenever a specific request for information disclosure to a third party is made in the framework of this MMoU these requests should be formulated in written form addressed to the appropriate appointed contact person identified in Annex 1.

h) Consultation/collaboration under this MMoU

33. The Authorities will keep the operation of this MMoU under regular review and collaborate with a view to improving its operation and resolving any matters.
34. Where the specific conduct set out in the request for assistance may constitute a breach of law(s), regulation(s) or requirement(s) in either one or both territories of the requesting and requested Authorities, the Authorities will consult to determine the most appropriate means for the relevant Authority to provide assistance.

i) Entry into effect and termination of the existing MMoU

35. This MMoU will take effect for the Authorities as of its date of signature.

36. This MMoU will continue to have effect until terminated by one of the signatory parties giving 30 calendar days advance written notice to the other signatory parties. The following will apply:

- a. Should the MMoU be terminated upon the notification of an EEA supervisor, the MMoU will remain in effect for the remaining signatories.
- b. Should the MMoU be terminated by BMA, the termination will affect all signatory supervisory authorities.

37. This MMoU may be amended in writing. In the case of accession of new EU member states, the BMA will be notified and with the agreement of the third country action initiated to add the new member state to the list of signatories.



Jeremy Cox, Chief Executive Officer

Signed on behalf of

The Bermuda Monetary Authority

Annex 1 – Contact details

| No. | Country | Institution | Contact details | Contact person/division |
|-----|---------|----------------------------------|--|--|
| 1. | Bermuda | BMA – Bermuda Monetary Authority | BMA House 43 Victoria Street HM 12 Bermuda | Mrs. Shauna MacKenzie, Director Legal Services and Enforcement |

And

| No. | Country | Institution – EIU/PA Member | Contact details | Contact person/division |
|-----|----------------|--|-----------------|-------------------------|
| 1. | Austria | FMA - Finanzmarktaufsicht (Financial Market Authority) | | |
| 2. | Belgium | NBB - Nationale Bank van België (National Bank of Belgium) | | |
| 3. | Bulgaria | Комисия за Финансов Надзор (Financial Supervision Commission) | | |
| 4. | Croatia | HANFA - Hrvatska agencija za nadzor financijskih usluga (Croatian Financial Services Supervisory Agency) | | |
| 5. | Cyprus | ICCS - Υπηρεσία Ελέγχου Ασφαλιστικών Εταιρειών Κύπρου (Cyprus Insurance Companies Control Service) | | |
| 6. | Czech Republic | CNB - Ceska Narodni Banka (Czech National Bank) | | |
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| 8. | Estonia | Finantsinspektsioon (Estonia Financial Supervision Authority) | | |
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| 10. | France | ACPR - Autorité de Contrôle Prudentiel et de Résolution (Prudential Control Authority) | | |
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| 20. | Netherlands | DNB - De Nederlandsche Bank (National Bank of Netherlands) | | |
| 21. | Poland | KNF - Komisja Nadzoru Finansowego (Polish Financial Supervision Authority) | | |
| 22. | Portugal | ISP - Instituto de Seguros de Portugal (Portuguese Insurance and Pension Fund Supervisory Authority) | | |
| 23. | Romania | ASF - Romanian Financial Supervisory Authority | | |

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| 24. | Slovakia | NBS - Narodna Banka Slovenska (National Bank of Slovakia) | | |
| 25. | Slovenia | AZN - Agencija za Zavarovalni Nadzor (Insurance Supervision Agency) | | |
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