

**MEMORANDUM OF UNDERSTANDING**  
**between the**  
**NATIONAL BANK OF UKRAINE**  
**and the**  
**KOMISJA NADZORU FINANSOWEGO**  
**ON COOPERATION IN THE AREA OF BANKING SUPERVISION**

The National Bank of Ukraine and the Komisja Nadzoru Finansowego – Polish Financial Supervision Authority (hereinafter the Authorities) express, through this understanding, their willingness to cooperate with each other on the basis of mutual trust and understanding in the supervision of cross-border establishments within their respective jurisdictions and taking into consideration, as appropriate, their particular supervisory needs. The Authorities will use their best endeavours to cooperate in routine supervisory procedures, and to notify and provide to each other relevant information regarding any material supervisory concerns in respect of a cross-border establishment.

**I. For the purposes of this Understanding:**

1. "Authority" means the Komisja Nadzoru Finansowego (KNF) – Polish Financial Supervision Authority and the National Bank of Ukraine (NBU).



2. "Supervised institution" means a bank and banking group incorporated in Poland and being subject to the supervision of the KNF or institutions incorporated in Ukraine subject to the supervision of the NBU.
3. "Cross-border subsidiary" means a separate legal entity authorized or supervised by a Host Authority and controlled (as such term maybe used in applicable law) by a supervised institution incorporated in the other country.
4. "Cross-border branch" means an organizational unit of a supervised institution incorporated in the Home Authority country operating in the Host Authority country.
5. "Cross-border establishment" means cross-border branches and cross-border subsidiaries.
6. "Home Authority" means the NBU in the Ukraine and the KNF in Poland, responsible for the supervision on a consolidated basis of a supervised institution and its cross-border establishments.
7. "Host Authority" means the KNF located in Poland or the NBU located in the Ukraine responsible for the supervision of cross-border establishments.

## **II. Sharing of Information**

The Authorities recognize that information should be shared in order to facilitate effective supervision of supervised institutions on a consolidated basis and on a solo basis. Information sharing should include contact during the authorization and licensing process, in the supervision of the on-going activities of such entities and in the possible revocation of a license.

1. The Authorities hereby recognize that closer co-operation during the authorization process of a cross-border establishment as well as sharing of information on an ongoing basis would be mutually advantageous for the Authorities for effective supervision of supervised institutions exercised on a consolidated basis.
2. The request for information pursuant to this article should be made in writing.




A request should generally specify the following:

- a) the information sought by the requesting Authority;
  - b) a general description of the matter which is the subject of the request and the
  - c) purpose for which the information is sought; and
  - d) the desired time period for a reply and, where appropriate, the urgency thereof.
3. The Authority receiving a request should acknowledge the receipt as soon as possible by mail, fax or e-mail and, to the extent possible, specify the estimated time period to provide a written response.
4. In connection with the authorization process,
- a) the host Authority should notify the home Authority, without any delay, of applications for the approval to establish or acquire cross-border establishments in the host jurisdiction;
  - b) upon request, the home Authority should inform the host Authority whether the applicant supervised institution is in substantial compliance with banking laws and regulations, including laws on prevention of money – laundering and financing terrorism, and whether the applicant may be expected, given its administrative structure and internal controls, to manage the cross-border establishment in an orderly manner. The home Authority should also, upon request, assist the host Authority by verifying or supplementing any information submitted by the applicant;
  - c) the home Authority should inform the host Authority about the nature of its regulatory system and the extent to which it will conduct consolidated supervision over the applicant. Similarly, the host Authority should indicate the scope of its supervision and indicate any specific features that might give rise to the need for special arrangements; and
  - d) to the extent permitted by law, the home and host Authorities should share information on the fitness and properness of prospective directors, managers and relevant shareholders of the cross-border establishment.



The procedures described above also would apply, to the extent appropriate, in cases where a supervised institution, rather than acquiring or establishing a subsidiary, seeks to acquire shares or exercise the voting rights of a supervised institution in the other jurisdiction and is required to seek authorization from the Authority in that other jurisdiction in order to acquire such shares or exercise voting rights.

5. When a supervised institution within the jurisdiction of the home Authority proposes to set up a cross-border establishment on the territory of the host Authority country, the host Authority shall seek the opinion of the home Authority (or obtain a statement of "no-objection") before the authorization is granted.
6. In connection with the ongoing supervision of cross-border establishments in the Ukraine and Poland, the Authorities should:
  - a) provide relevant information to the other Authority 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 about major changes, in particular those which have a significant bearing on the activities of cross-border establishments;
  - c) endeavour to inform the appropriate host Authority, in a timely manner and to the extent reasonable, about any event which has the potential to endanger the stability of cross-border establishments in the host country;
  - d) inform the other Authority of material administrative penalties imposed, or other formal enforcement action taken, against a cross-border establishment. Prior notification should be made, as far as practicable and subject to applicable laws; and
  - e) facilitate the transmission of any other relevant information that might be required to assist with the supervisory process.
7. Before enforcement or administrative action is taken by one Authority on the sole basis of information received from the other Authority, the former will endeavour to consult the latter.



### III. On-site Inspections

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. The Authorities shall organize on-site inspections carried out by their own staff or the auditors commissioned by them.

1. Both the home Authority and the host Authority have the right to carry out on-site inspections of cross-border branches in the host country.

The Authorities shall inform in advance, usually two months before the commencement of the on-site inspection of a cross-border branch, the other country's Authority about the planned on-site inspection in such a branch by indicating the name of the branch, objective of the inspection, names of inspectors (the last is not related to host Authority), the expected date of commencement, and duration of the inspection. The Authorities shall allow each other to participate in the on-site inspection of a cross-border branch carried out by the Authorities themselves, or the auditors commissioned by them.

2. On-site inspections of cross-border subsidiaries shall be conducted by the host Authority. The inspectors of the home Authority or the auditors commissioned by it shall participate in the inspection conducted by the host Authority as observers in accordance with the procedures of such inspection organization established by the host Authority.

On-site inspections of cross-border subsidiaries may be initiated by both the home Authority and the host Authority. To initiate an on-site inspection of a cross-border subsidiary, the home Authority shall present a request to the host Authority to conduct the inspection, indicating the name of the cross-border subsidiary, the objective of the inspection and the names of its inspectors. The host Authority shall organize the conducting of an on-site inspection of this cross-border subsidiary not later than during a two months period from the date of receiving such a request and invite the home Authority inspectors or auditors commissioned by it to participate in such an inspection as observers.

When the on-site inspection of a cross-border subsidiary is initiated by the host Authority, it shall notify the home Authority of such an inspection at



least two months in advance of the commencement of the inspection and shall indicate the name of the cross-border subsidiary, the objective of the inspection, the expected date of the commencement and duration of the inspection, and invite the home Authority inspectors or auditors commissioned by it to participate in the inspection as observers. If the home Authority does not express its wish to participate in the on-site inspection of a cross-border subsidiary organized by the host Authority, the inspection shall be carried out by the host Authority alone.

3. The Authority, upon completion of an on-site inspection of a cross-border establishment in which the other Authority did not participate, in case of request received or if it considers it necessary, shall as soon as possible within a period of one month after the receipt of a request or the completion of an inspection provide the other Authority with general information on the financial condition of the cross-border establishment, violations of legal acts identified and deficiencies found, including those related to the prevention of money laundering and financing terrorism.

#### **IV. Financial Crimes**

1. The Authorities will cooperate closely when they identify suspected financial criminal activities in supervised institutions. For the purposes of this understanding, financial crimes include money laundering and unauthorized banking business.
2. The home and host Authorities may share information to the extent allowed under their laws on financial crimes concerning the respective supervised institutions which carry out cross-border activities in the other country or which could affect the other country. In the event when an Authority, during an examination or inspection conducted on the territory of the counterparty's jurisdiction, detects a serious criminal violation of the laws of its jurisdiction, the Authority may be under a strict legal obligation to pass the information immediately to the appropriate law enforcement authorities in its home country. In these circumstances, to the extent permitted by law, the Authority should inform the other Authority of its intended action.



## V. Protection of Information

1. Information would be shared to the extent reasonable and subject to relevant statutory provisions, including those restricting disclosure. The request for information under this understanding may be denied on grounds of public interest or national security or when disclosure would interfere with an ongoing investigation.
2. Any confidential information received from the other Authority will be used exclusively for lawful supervisory purposes. To the extent permitted by law, each Authority would hold confidential all information obtained and would not disclose such information other than as necessary to carry out its lawful supervisory responsibilities. In this regard, employees of each supervisory authority are generally bound to hold confidential all information obtained in the course of their duties.
3. In the case where an Authority is legally compelled to disclose confidential information received under this understanding that Authority would cooperate in seeking to preserve the confidentiality of the information to the extent permitted by law. The Authority receiving a legally enforceable request for confidential information provided under this understanding would, to the extent permitted by law, consult with the Authority that provided such information before providing it to the requesting body. If the Authority that provided the information does not consent to the onward sharing, the Authority that is compelled to share will advise the requesting body that the forced disclosure could adversely affect the future transmission of confidential information by foreign supervisory authorities and request that the information be kept confidential by the requesting body.
4. In cases where an Authority receives a request for information from a third party, but disclosure is not legally compelled or necessary to carry out the Authority's lawful supervisory responsibilities, the Authority receiving the request would consult and obtain the prior consent from the Authority that originated the information in order to release it.



## **VI. Ongoing Coordination**

The Authorities may promote their cooperation through visits for information purposes and by exchanges of staff. In addition, the Authorities may pursue areas where the training of staff at one agency would benefit from input and support by the other agency in order to reinforce sound banking supervisory practices in both countries.

The Authorities would conduct meetings as often as appropriate to discuss issues concerning supervised institutions which maintain cross-border establishments within their respective jurisdictions.

## **VII. Final Provisions**

The Authorities provide for the possibility of making changes and amendments to this Memorandum of Understanding in order to ensure its compliance with the requirements of the legislative and regulatory acts of both parties regarding bank activities regulation.

This Memorandum of Understanding becomes effective from the date of its signing by both Authorities. Cooperation and assistance in accordance with this Memorandum of Understanding will continue until the expiration of 30 days after one Authority gives a written notice to the other Authority of its intention to discontinue cooperation and assistance. If an Authority gives such a notice, cooperation and assistance in accordance with this Memorandum will continue with respect to all requests for assistance that were made before the effective date of notification until the requesting Authority withdraws the matter for which assistance was requested. In the event of termination of this Memorandum of Understanding, information obtained under this Memorandum of Understanding will continue to be treated confidentially in accordance with the provisions of Article V.


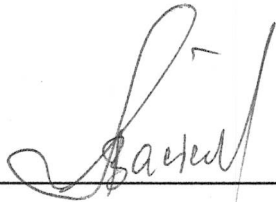




The Memorandum has been prepared in two copies in English, both being originals.

**The National Bank of Ukraine**

**The Komisja Nadzoru  
Finansowego**



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Vasyl Pasichnyk

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Stanisław Kluza

Date: 24<sup>th</sup> September 2009

Date: 24<sup>th</sup> September 2009