

MEMORANDUM OF UNDERSTANDING BETWEEN THE SSM-ECB AND ABU DHABI GLOBAL MARKET – FINANCIAL SERVICES REGULATORY AUTHORITY

This Memorandum of Understanding is made BETWEEN

Abu Dhabi Global Market – Financial Services Regulatory Authority, with its headquarters at ADGM Building, ADGM Square, Al Maryyah Island, Abu Dhabi, UAE,

hereinafter FSRA,

AND

The European Central Bank, with its headquarters at Sonnemannstrasse 20, 60314 Frankfurt am Main, Germany,

hereinafter the 'ECB',

(hereinafter jointly 'the Authorities' and each of them, individually, 'the Authority')

WHEREAS:

- (1) Council Regulation (EU) No 1024/2013¹ (hereinafter the 'SSM Regulation') confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions. This Memorandum of Understanding will cover the supervisory tasks conferred on the ECB by Article 4, read in conjunction with Article 6(4), of the SSM Regulation. Cooperation under this Memorandum of Understanding is without prejudice to the NCAs² tasks and responsibilities under European Union and national laws, as well as Memoranda of Understanding they are part to (or will become part to) for the performance of their tasks.

¹ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

² National Competent Authorities of the participating Member States of the European Union (NCAs).

- (2) Article 6 of the SSM Regulation lays down the criteria for the identification of supervised entities. The methodology for the assessment of the criteria is laid down in Regulation (EU) No 468/2014 of the European Central Bank³ (hereinafter the 'SSM Framework Regulation'), especially its Articles 39 to 72. An up-to-date list of significant credit institutions and less significant credit institutions is published on the ECB's website:
<https://www.bankingsupervision.europa.eu/banking/list/who/html/index.en.html>
- (3) The ECB enters into this Memorandum of Understanding having regard to Article 55 of the CRD IV⁴, Article 8 of the SSM Regulation, and Article 152 of the SSM Framework Regulation.
- (4) Pursuant to Abu Dhabi Law No. (4) of 2013, FSRA is the competent authority for the supervision of credit institutions in the Abu Dhabi Global Market (ADGM).
- (5) The FSRA enters into this Memorandum of Understanding on the basis of Abu Dhabi Law No. (4) of 2013.
- (6) Through this Memorandum of Understanding, the ECB and the FSRA express their willingness to cooperate with each other on the basis of mutual trust and understanding for the purpose of performing their supervisory tasks in respect of cross border credit institutions that fall within their supervisory responsibilities under the SSM Regulation and Abu Dhabi Law No. (4) of 2013.
- (7) In order to allow for smooth communication between them, the Authorities will nominate contact persons who represent them in the activities covered by the present Memorandum of Understanding (see list in Annex 1 providing the contact details of the contact persons).

THE AUTHORITIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

DEFINITIONS⁵

For the purpose of this Memorandum of Understanding:

³ Regulation (EU) No 468/2014 of the European Central Bank of 16 April establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (OJ L 141, 14.5.2014, p. 1).

⁴ (CRD IV) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance (Official Journal of the European Union, L 176, 27.6.2013, p. 338). Pursuant to Article 55 CRD IV, a condition for the ECB to enter into agreements with third country Authorities is that their confidentiality regime is equivalent to the one in the EU.

⁵ The Authorities recognise that while they may define terms differently in their laws, regulations and requirements, requests for assistance will not be denied solely on the grounds of differences in the definitions used by the requesting and requested Authorities.

- 'supervised entities' means entities that fall within the supervisory remit of the Authorities, as identified by their respective legislation, including their cross-border establishments⁶;
- 'Authority' means any of the signatories of this Memorandum of Understanding, together also referred to as 'Authorities';
- 'cross-border establishment' means a branch, a subsidiary or any other entity of a supervised entity operating or localised within one jurisdiction, and over which the Authority in the other jurisdiction exercises supervisory responsibilities;
- 'participating Member States' means a Member State whose currency is the euro, or a Member State whose currency is not the euro which has established a close cooperation in accordance with Article 7 of the SSM Regulation;
- 'authorisation process' means the process pursuant to which a supervised entity is permitted to perform its activities⁷;
- 'qualifying holding assessments': the assessment that the Authorities are required to perform, in applying their respective legislations, in respect of purchases of, or variations in, holdings in a supervised entity – intended or accomplished and in whatever form⁸;
- 'assessment of directors' means the assessment that the Authorities are required to perform, when applying their respective legislations, in respect of those who direct the business of a supervised entity⁹;
- 'requested Authority' means the Authority to whom a request is addressed to under this Memorandum of Understanding;
- 'requesting Authority' means the Authority making a request under this Memorandum of Understanding;
- 'laws, regulations and requirements' means the provisions of the laws, or the regulations and requirements promulgated thereunder, of the ADGM and, to the extent applicable within ADGM, the United Arab Emirates and of the European Union in relation to the prudential supervision of the supervised entities;

⁶ For the ECB the term can refer to credit institutions, financial holding companies and mixed financial holding companies as defined in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁷ For the ECB, the legal reference is Article 4(1)(a) of the SSM Regulation, read together with Article 8 et seq. of Directive 2013/36/EU (CRD IV).

⁸ For the ECB, the legal reference is Article 4(1)(c) of the SSM Regulation, read together with Article 22 et seq. of Directive 2013/36/EU (CRD IV).

⁹ For the ECB, the legal reference is Article 4(1)(e) of the SSM Regulation, read together with Articles 91 and 121 of Directive 2013/36/EU.

- 'jurisdiction' means the territory of the country concerned under this Memorandum of Understanding. For the purposes of this Memorandum of Understanding, each of the territories of the participating Member States is considered to be an ECB's jurisdiction.

Article 1

Purpose and general principles

The purpose of this Memorandum of Understanding is to formalise cooperation and information-sharing mechanisms between the ECB and the FSRA, the competent supervisory Authority of ADGM. Such cooperation is essential in order to promote the integrity, stability and efficiency of the supervised entities.

This Memorandum of Understanding is aimed at ensuring the effective exchange of supervisory information for the performance of the Authorities' respective supervisory powers over supervised entities, to the extent permitted by law, and in accordance with the Core Principles for Effective Banking Supervision developed by the Basel Committee on Banking Supervision.

The Authorities recognise that cooperation under this Memorandum of Understanding may be denied on the grounds of laws, regulations and requirements, or public interest, as well as where it would interfere with an on-going investigation or jeopardise the proper performance of the tasks of the Authorities, including due to resources constraints.

Article 2

Principles regarding exchange of information

Each Authority will endeavour to provide the other Authority, on a timely basis upon request or on its own initiative, where appropriate and insofar as feasible, with any information that is necessary for the exercise of the other Authority's supervisory tasks.

A request for information will include the following:

- i. a description of the facts underlying the request, and its purpose;
- ii. the reasons why the information is likely to be relevant for the proper performance of the requesting Authority's tasks, and in light of the requesting Authority's legislation, including a specification of the supervisory tasks that are connected with the subject matter of the request;
- iii. any information known to, or in the possession of, the requesting Authority that might assist the requested Authority in fulfilling the request.

Where a request for information is denied or the information requested is not available, the requested Authority will provide the reasons for not sharing the information.

The exchange of information will be conducted in writing, regardless of its format (paper, electronic communication or other). Both the request for information and the communication

of the requested information will be addressed between the Authorities primarily through the designated contact persons (see list in Annex 1). In urgent circumstances, requests may be made by telephone, provided that they are subsequently confirmed in writing within 5 working days.

Personal data shall not be exchanged under this Memorandum of Understanding.

Article 3 **Confidentiality**

The Authorities will endeavour to preserve the confidentiality of the information received to the extent permitted by laws, regulations and requirements. In this regard, each Authority will hold confidential all information received from the other Authority. Any confidential information received by the requesting Authority from the requested Authority will be used exclusively for lawful supervisory purposes, and will not be disclosed except as set out below.

The Authorities will endeavour that all persons dealing with, or having access to confidential information (including members of the Authority, employees, external providers having access to confidential information) are bound by the obligations of professional secrecy in compliance with relevant laws, regulations and requirements.

Either Authority may be requested by a third party to disclose confidential information received under this Memorandum of Understanding, or alternatively, may consider it appropriate to disclose confidential information to a third party, including a supervisory authority that might have a legitimate interest in such information. The prior consent of the requested Authority will be sought and obtained in writing by the requesting Authority before any disclosure to a third party of confidential information exchanged under this Memorandum of Understanding will occur. The requested Authority may deny disclosure or impose conditions to the disclosure, including that the third party will hold the information confidentially.

Where required under a legal obligation to disclose confidential information received pursuant to this Memorandum of Understanding, the requesting Authority will, to the extent permitted by law, inform the requested Authority about the purposes for which the information is proposed to be shared, the uses that the third party could make of the information and the safeguards that the third party would apply to ensure confidentiality. Where the requested Authority does not consent to the disclosure to a third party, and where possible and appropriate, the requesting Authority will take reasonable steps to resist disclosure, including by employing legal means to challenge the request for disclosure or by advising the third party of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Authorities.

Article 4

Cooperation in relation to the on-going supervision

Each Authority will use its best endeavours to provide, upon prior request, or on its own initiative where appropriate, the other Authority with any information that is likely to be of assistance to it in order to promote the safe and sound functioning of supervised entities.

Each Authority will provide relevant information to the other in a timely manner, and up to a maximum of 15 working days, following the occurrence of any event that has the potential to have a material adverse impact on the operations of a cross-border credit institution in the other jurisdiction.

The information mentioned under this Article will be given insofar as possible and subject to applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 5

On-going coordination/cooperation

The Authorities will conduct meetings, as appropriate, to discuss issues concerning supervised entities that maintain cross-border establishments in their respective jurisdictions, and to review the effectiveness of this Memorandum of Understanding. The Authorities also intend, where practicable, to promote their cooperation by means of visits for informational purposes.

To the extent possible, the Authorities will conduct their communication via the designated contact persons set out in Annex 1. This Annex may be amended by written notice from either Authority without the need to amend this Memorandum of Understanding.

The information mentioned under this Article will be given insofar as possible and subject to applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 6

Cooperation in relation to the authorisation process / qualifying holdings assessments / assessment of directors

The Authorities will notify each other, without delay, of applications for approval to establish cross-border establishments or make acquisitions.

Upon request, the Authorities will inform each other whether the applicant is in substantial compliance with applicable laws and regulations and whether it may be expected, in light of its administrative structure and internal controls where relevant, to manage the supervised entity or the cross-border establishment in an orderly manner. The Authorities will also, upon request, assist each other with verifying or supplementing any information submitted by the applicant.

Upon request, the Authorities will inform each other about the nature of its supervisory system and the extent to which it will conduct supervision, including consolidated or group-wide, over the applicant.

Upon request, and where available, the Authorities will supply each other with information on proposed acquirers.

Article 7

Breach reporting mechanism (BRM)

The Authorities will share the information at their disposal through a breach reporting mechanism/whistleblowing scheme, if such exchange of information is necessary and proportionate. An exchange of information in this regard shall be subject to any relevant statutory provisions, including those restricting disclosure.

Article 8

Cooperation in relation to enforcement and sanctions

Upon request, each Authority will inform the other of non-public administrative pecuniary penalties, enforcement or sanction decisions in respect of a cross border establishments or in respect of supervised entities insofar as it relates to the operation of cross-border establishments in that jurisdiction¹⁰.

The above mentioned information will be given as far as practicable and subject to applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 9

Cooperation in relation to on-site inspections

The Authorities will assist each other as far as practicable, with the conduct of on-site inspections of cross border establishments situated in the other Authority's jurisdiction. Where assistance cannot be provided, the Authority requested to provide assistance will notify it to the other Authority as soon as deemed practical.

The Authorities will duly notify each other of plans to inspect a cross-border establishment, or to appoint a third party to conduct an inspection on its behalf in advance, and will do so at least one month in advance for non-urgent missions. This notification will detail the purposes, scope, expected starting and ending dates of the inspection, the cross-border establishment to be inspected, and the names of the persons leading the inspection. The Authorities reserve the right to accompany each other on such an inspection. On conclusion of the inspection of the cross-border establishment, the Authority performing the examination

¹⁰ For the requests addressed to the ECB, this means that the ECB may only share information related to administrative pecuniary penalties imposed pursuant to Article 18(1) of the SSM Regulation, and sanctions imposed pursuant to Article 18(7) of the SSM Regulation.

will present the Authority with the relevant findings, and/or will provide it with the relevant sections of the on-site inspection report within a reasonable timeframe.

The information mentioned under this Article will be given insofar as possible and subject to applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 10

Cooperation in relation to internal models or advanced approaches (internal models)

The Authorities agree that cooperation is useful in achieving a deep understanding of the implementation of the internal models in the credit institutions that fall under their supervision. In this regards, the Authorities will in particular endeavour to exchange views and information: (a) on the role that these tools have in the supervised entity's decision making process; (b) on the data and IT framework set up to ensure that all relevant information is properly reflected into the internal models; and (c) on the internal controls and internal governance that apply at individual and consolidated level.

The Authorities agree that a common decision with respect to the authorisation request is needed for guaranteeing a calculation of the minimum capital requirements at the consolidated level that is consistent with those obtained at the individual level. In order to reach such a common decision, the Authorities will provide each other, in due time, with all the relevant information, including the supervised entities' plans for implementing the internal models for regulatory purposes.

The Authorities agree that initial identification of the tasks to be performed during the assessment and judicious division of the work involved in carrying out these tasks guarantee an effective and efficient way to reach a common decision on the request for authorisation. During the assessment, both Authorities will keep each other informed, in a timely manner, of the results of the investigation and the main deficiencies identified.

Where an on-site inspection is needed to perform the internal-models-related assessment, the Authorities will apply Article 10.

The final common decision will be agreed upon by the Authorities and communicated to the concerned supervised entity at the same time by each Authority.

The Authorities agree that close cooperation is needed to guarantee proper implementation of the recommendations provided in the final common decision. The Authorities will use their best endeavours to share the work involved in reviewing the actions taken by the supervised entity in order to address these recommendations.

The information mentioned under this Article will be given insofar as possible and subject to applicable laws and regulations, and in accordance with the principles set out in this Memorandum of Understanding.

Article 11

Cooperation in relation to emergency situations

The Authorities will inform each other immediately if they become aware of an incipient crisis such as, but not limited to, serious financial difficulties which might have an adverse impact on operations relating to any supervised entity in the respective jurisdictions of the Authorities.

To the extent possible, and without prejudice to their involvement in the relevant cross-border cooperation fora, the Authorities will endeavour to seek coordinated responses to any crisis emerging in a cross-border establishment operating in their respective jurisdictions, in accordance with their respective applicable legislations.

Article 12

Status of this Memorandum of Understanding

This Memorandum of Understanding sets forth a statement of intent and does not modify nor supersede any laws, regulations and requirements in force in, or applying to, ADGM, or, to the extent applicable within ADGM, the United Arab Emirates or the European Union or any of the Member States of the European Union. Nor does this Memorandum of Understanding create any directly or indirectly enforceable rights for the Authorities or any third party.

This Memorandum of Understanding is without prejudice to other cooperation arrangements that each Authority might conclude, and can be supplemented with specific memoranda of understanding between the same Authorities agreed upon for the purpose of cooperating for the supervision of a specific cross-border establishment.

The Authorities will use their best endeavours in the performance of this Memorandum of Understanding. However, neither Authorities nor any third party can bear or seek any liability regarding the performance of this Memorandum of Understanding.

Any disagreement arising from the interpretation or the performance of this Memorandum of Understanding will be amicably settled by means of consultations between the Authorities.

Any amendment to this Memorandum of Understanding, including this Article, will be made in English and have effect only if executed by the Authorities in writing.

This Memorandum of Understanding will take effect as of the later of the two dates written below and will continue indefinitely, subject to modification by mutual consent of the Authorities or termination by either Authority with 30 days prior notice to the other Authority.

In the event of termination of this Memorandum of Understanding, the information obtained hereunder will continue to be treated in accordance with the confidentiality regime.

For the Abu Dhabi Global Market – Financial
Services Regulatory Authority

Date:

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[signed]

Richard Teng
Chief Executive Officer Abu
Dhabi Global Market
Financial Services Regulatory Authority

For the European Central Bank

Date:

13 August 2020

[signed]

Andrea Enria
Chair of the Supervisory Board of the ECB

For the European Central Bank

Date:

13 August 2020

[signed]

Yves Mersch
Vice-Chair of the Supervisory Board of the
ECB

Annex 1 redacted