



Cooperation Arrangement concerning banking resolution

between

The Australian Prudential Regulation Authority (APRA)

and

The Single Resolution Board (SRB)

(together, “the Authorities”)

Background

1. This Cooperation Arrangement (“CA”) 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 resolution-related functions.
2. This CA is a statement of intent and does not create any legally binding obligations or rights on the Authorities.
3. This CA 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 individuals;under relevant laws in their respective jurisdictions.
4. For the purpose of this CA:

“Authority” or “Authorities” means either APRA or SRB or both Authorities together.

“Entity” or “Entities” means an entity, body or group which is under direct responsibility of either of the Authorities.

“National Resolution Authority” means a public administrative authority or authorities entrusted with public administrative powers and empowered by a Participating Member State of the European Union to apply resolution tools and exercise resolution powers in relation to an Entity.

“National Competent Authority” means a public authority or body officially recognised by national law of a Participating Member State of the European Union, which is empowered by national law to supervise credit institutions as part of the supervisory system in operation in the Member State concerned.

“Non-participating Member State” means a Member State of the European Union, whose currency is not the Euro and which has not established a close cooperation in accordance with Article 7 of the 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.

“Onward Sharing Recipients” mean authorities with which the SRB is required under Article 30(2) of the Single Resolution Mechanism Regulation (“SRM Regulation”)¹ to disclose confidential information on an ongoing basis during business-as-usual. The Onward Sharing Recipients are limited to only the following: the National Resolution Authorities, the National Competent Authorities, the European Central Bank, the European Commission, and the Council of the European Union.

“Participating Member State” means a Member State of the European Union, whose currency is the Euro or a Member State of the European Union, whose currency is not the Euro but which has established a close cooperation in accordance with the Single Supervision Mechanism Regulation. The Participating Member States compose a so-called ‘Banking Union’.

“Disclosing Authority” means the Authority who is receiving a request and/or providing any information under this CA.

“Recipient Authority” means the Authority requesting and/or receiving any information under this CA.

¹ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 as amended from time to time.

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 and resolution of authorised deposit-taking institutions (banks, building societies and credit unions), general insurers, life insurers, friendly societies, private health insurers, reinsurance companies, and superannuation funds (other than self-managed funds) authorised to operate in Australia. APRA's resolution function is directed at protecting the Australian community from financial loss and disruption by planning for and implementing prompt and effective responses to a crisis in the financial system. APRA fulfils its role by establishing and enforcing prudential standards, including from 1 January 2024 Prudential Standard CPS 900 Resolution Planning. APRA is tasked with administering the Financial Claims Scheme (FCS) in the event that the Australian Government activates it.

6. The SRB fulfils the task of a European resolution authority as part of the Single Resolution Mechanism ("SRM") in accordance with the SRM Regulation. The main aims of the SRM are to ensure effective and uniform resolution rules and equal conditions of resolution financing across the Participating Member States under a centralised power of resolution. The SRB is responsible for the collection of information and the cooperation with the National Resolution Authorities for the elaboration of resolution planning for entities under its remit, including the assessment of resolvability and the determination of the minimum requirement for own funds and eligible liabilities. In performing its tasks, the SRB works with other relevant Authorities, which in some instances are the primary sources of certain relevant information and with which requests for such information must be coordinated. It is responsible for the adoption and monitoring of execution of resolution schemes for all entities falling under its remit as set by the SRM Regulation. In accordance with Article 18(7) of the SRM Regulation, the European Commission and the Council of the European Union are responsible for approving or objecting to the resolution scheme adopted by the SRB with regard to the scheme's discretionary aspects. Moreover, pursuant to Article 7(3) and 31(1) of the SRM Regulation, the SRB receives from the National Resolution Authorities any draft decisions on which it may express its views. In case of non-compliance and where necessary to ensure the consistent application of high-resolution standards the SRB may issue warnings to the relevant National Resolution Authority. Furthermore, at any time, the SRB may decide to exercise direct powers under Article 7(4) of the SRM Regulation. The SRB also represents the National Resolution Authorities of the Participating Member States for the purpose of consultation and cooperation with the Non-Participating Member States or third countries pursuant to Article 32(1) of the SRM Regulation and concludes cooperation arrangements on behalf of the National Resolution Authorities of the

Participating Member States pursuant to Article 32(4) of the SRM Regulation. This does not affect APRA's ability to communicate, share information and establish relations with the National Resolution Authorities, provided that APRA informs the SRB accordingly.

General Principles

7. The Authorities recognise the importance of close and effective communication concerning the global operations of Entities, and intend to consult regularly regarding general resolution developments, including the sharing of all relevant information when requested, such as – to the extent permitted by applicable law and not contrary to public policy – Entity-developed recovery plans and agency-developed resolution plans pertaining to the group as a whole or to individual subsidiaries where plans of subsidiaries exist, and issues relevant to the operations, activities, and regulation of such Entities. Furthermore, the Authorities will seek to enhance cooperation in the analysis of Entities' resolution issues, development and update of resolvability assessments, planning for potential resolution scenarios, and appropriate simulations, contingency planning or other work designed to improve preparations of the Authorities for managing and resolving crises involving Entities.
8. Arrangements and tools for cross-border resolution should be flexible and designed to allow for adaptation to the specific features of a crisis and the individual institutions involved. Cross-border arrangements will build on effective resolution regime arrangements and cooperation between the Authorities. The Authorities intend to undertake steps to improve their ability to promptly assess the broader effects of any financial crisis and its cross-border implications based on common terminology and analyses.
9. The Authorities endeavour within the framework of this CA, to provide each other with all reasonable assistance to promote the safe and sound functioning of Entities supervised by the Authorities, subject to domestic laws and the Authorities' overall policies.
10. The Authorities expect that requests for assistance or information will be made in writing by staff members of the Authorities whom the Authorities nominate from time to time as their respective contact officers for the purpose of sharing information under this CA. 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.

11. 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.
12. The Authorities expect each other to mark all documents provided under this CA, "CONFIDENTIAL – PROVIDED UNDER COOPERATION ARRANGEMENT BETWEEN APRA AND THE SRB".

Confidentiality

13. The Authorities understand that they will use their best endeavours to preserve the confidentiality of the information received under this CA. 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 resolution-related purposes to fulfil their respective duties.
14. Any confidential information received from a Disclosing Authority will be used only for lawful resolution purposes (which may include monitoring of Entities, crisis management activities and resolution planning). To the extent permitted by law, a Recipient Authority will hold confidential all information (other than publicly available information) received from a Disclosing Authority pursuant to this CA and will not disclose such information to any unauthorised third parties.
15. Except as provided in paragraphs 17 and 18, before a Recipient Authority discloses any confidential information received from a Disclosing Authority to a third party, the Recipient Authority will request and obtain prior written consent from the Disclosing Authority, which will not be unreasonably withheld.
16. In the event that a Recipient Authority is required by statute or legal process to disclose confidential information provided pursuant to this CA, it will, to the extent permitted by law, inform the Disclosing Authority about such possible onward sharing. If the Disclosing Authority does not consent to such disclosure, then, the Recipient Authority will take all available and appropriate steps to resist disclosure, including by employing legal means to challenge the order or by advising the third party requiring such information of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Authorities.

17. With respect to paragraph 15, the SRB represents that it is required by Article 30(2) of the SRM Regulation to disclose on an ongoing basis during business-as-usual confidential information with the Onward Sharing Recipients. The SRB further represents that obtaining consent of, or providing notice to, APRA prior to such disclosure to the Onward Sharing Recipients would prove burdensome in light of the ongoing nature of this requirement to disclose. The SRB may therefore disclose confidential information to the Onward Sharing Recipients on a need-to-know basis pursuant to this requirement, subject to the following condition:

Before disclosing confidential information to the Onward Sharing Recipients, the SRB will obtain assurance from each Onward Sharing Recipient receiving such confidential information, that,

- in addition to such professional secrecy requirements as may be required by law, the confidential information will not be further disclosed by the Onward Sharing Recipient, except to National Resolution Authorities on a need-to-know basis, or as authorised by the SRB after the SRB obtains APRA's written consent. The SRB will inform APRA without undue delay of such requests and of any information shared with any of the Onward Sharing Recipients as a result thereof; and
- in the event that the Onward Sharing Recipient is required by statute or legal process to disclose confidential information provided pursuant to this CA, the Onward Sharing Recipient will, to the extent permitted by law, inform APRA (through the SRB) about such possible onward sharing. If APRA does not consent to such disclosure, the Onward Sharing Recipient will take all available and appropriate steps to resist the request including by employing legal means to challenge the request.

Ongoing Cooperation on Resolution Matters

18. The Authorities intend to provide relevant information to each other with regard to their involvement in bank resolution, in a timely and reasonable manner. The Authorities aim to undertake information sharing to inform the entity-specific resolution planning processes for groups with cross-border Entities and to help prepare for the resolution of cross-border Entities. The Authorities will seek to engage when a cross-border Entity encounters a period of stress and endeavour to cooperate on an ongoing basis on resolution matters.

Ancillary provisions

19. The Authorities expect to conduct meetings as often as appropriate to discuss issues concerning Entities 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.

Data Protection

20. The personal data exchanged on the basis of this CA are processed in line with the applicable legal framework. In particular, the SRB processes personal data, including that contained in the information received from APRA, in accordance with Regulation (EU) No 2018/1725 or Regulation (EU) No 2016/679, and in line with the SRB Privacy Note, as the case may be. APRA, on the other hand, processes personal data, including that contained in information received from the SRB, in accordance with the *Privacy Act 1988*.

Review and Amendment

21. Authorities may review the functioning and effectiveness of cooperation and information exchange under this CA when deemed necessary by both Authorities.
22. Any amendment to this CA, except for the Annexure, requires mutual consent of the Authorities and will be confirmed in writing unless otherwise determined. Any changes in the Annexure will be communicated between the Authorities. Such changes will not affect the content of the CA.

Application and Termination

23. This CA will commence from the later of the dates written below and continue indefinitely, subject to modification by the mutual consent of the Authorities or termination by an Authority with 30 days advance written notice to the other Authority. Where a written notice of termination is given, this CA will continue to have effect with respect to all existing requests made before the notice of termination is received. After termination, the confidentiality provisions will continue to apply to any information provided under this CA prior to termination.

On behalf of:

The Australian Prudential Regulation Authority

By John Lonsdale **Dated: 06/03/2023**
Chairman

The Single Resolution Board

By Dominique Laboureix **Dated: 16/02/2023**
Chair

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