

MEMORANDUM OF UNDERSTANDING

between the Bank of Estonia and the Bank of Lithuania

on co-operation in the area of credit institutions' supervision

The Bank of Estonia (hereinafter: the Estonian authority or Party) and the Bank of Lithuania (hereinafter: the Lithuanian authority or Party) (and both hereinafter referred to jointly as the Estonian and Lithuanian authorities or Parties),

Referring to the Basle Concordat and documents No. 30, "Core principles for effective banking supervision" and No. 27, "The Supervision of Cross-Border Banking" provided by Basle Committee on Banking Supervision (hereinafter: "Basle Documents"),

Declaring mutual interest in establishing and developing bilateral relations in the area of credit institutions' supervision,

Seeking mutual understanding in the issues relating to the regulation of activities of credit institutions and the interaction in the supervision of credit institutions registered on the territories of the Parties,

Understanding that no foreign banking establishment should escape from supervision and that the supervision should be adequate,

Willing to facilitate the performance of their respective duties and to promote the safe and sound functioning of cross-border credit institutions in their countries,

Desiring to promote and expand mutually beneficial co-operation and exchange of information between their countries on the basis of equality and non-discrimination,

Convinced that the exchange of information will contribute to increased mutual understanding and co-operation between the respective Estonian and Lithuanian authorities,

Conscious of the exchange of information being an essential element of the bilateral relationship between the Estonian and Lithuanian authorities,

Having agreed to supervise the credit institutions transacting cross-border business in Estonia and Lithuania according to the legal framework applicable in Estonia and Lithuania in the spirit of close collaboration and mutual trust.



The Estonian and Lithuanian authorities deem it necessary for the purpose of fruitful co-operation to create a common basis for finding practical arrangements for the procedures laid down in their legislation concerning the supervision of credit institutions and their cross-border banking establishments and to translate those arrangements into clear directions to their employees.

I. GENERAL PROVISIONS

1 - General framework

- 1 By this Memorandum of Understanding, Parties are willing to exchange information on a regular basis on the state and development of the banking system in either country. The Estonian and Lithuanian authorities commit themselves to co-operate on a best-effort basis on all prudential matters pertaining to cross-border banking establishments (hereinafter: "cross-border establishments").
2. For the purposes of this Memorandum of Understanding, the Estonian and Lithuanian authorities shall consider a credit institution to be a bank (accepting deposits and other repayable funds from the public, extending loans, etc.) the activities of which are subject to licensing and banking supervision by the Estonian or Lithuanian authorities, respectively.
3. For the purposes of this Memorandum of Understanding the Estonian and Lithuanian authorities shall consider any branch, banking subsidiary or representative office of a foreign credit institution to be a cross-border establishment subject to this Memorandum of Understanding. For the purposes of this Memorandum of Understanding a banking subsidiary (hereinafter: subsidiary) shall be considered any credit institution which is a subsidiary of a credit institution.
4. In Estonia the activities of cross-border establishments shall be governed by the laws of Estonia. A foreign credit institution shall be obliged to respond to actions brought into Estonian courts and to comply with any decisions and orders of the Estonian authorities.
5. In Lithuania the activities of cross-border establishments shall be governed by the laws of Lithuania. A foreign credit institution shall be obliged to respond to actions brought into Lithuanian courts and to comply with any decisions and orders issued by the Lithuanian authorities.



2 - Form and extent of co-operation

(1) Professional secrecy

6. Compliance with the obligation of professional secrecy by all employees receiving classified information in the course of their activities is absolutely necessary for the successful co-operation between the Estonian and Lithuanian authorities.
7. Information received from either authority may be used for supervisory purposes only and shall be disclosed solely to the competent authorities provided for in the legislation of the country of the other authority and if the confidentiality of the information is ensured. Beyond that it may not be given to third parties without prior consent of the Estonian or Lithuanian authority, respectively.

(2) Exchange of information

8. The functions of the host country authority will include the duty of informing in due course the home country authority of any event of a cross-border establishment which comes to its knowledge and might jeopardise the stability of the credit institution as a whole.
9. The Estonian and Lithuanian authorities will closely collaborate with each other both on a regular basis and whenever a particular case so requires. Persons entrusted with home or host supervisory functions may at any time seek the advice of their peers from the other Party. Whenever particular supervisory issues call for clarification, for the settlement there will be taken all available communication measures and *ad hoc* meetings may be arranged. Information visits will strengthen the mutual ties of co-operation.
10. The Estonian and Lithuanian authorities will notify each other of any substantial change in their domestic supervisory regimes, policies in general and deposit-guarantee schemes. They will inform each other of administrative penalties (enforcement measures) imposed or other actions taken on cross-border establishment or institution as a whole if they judge such information to be of possible importance to the other authority.
11. In addition, the Estonian and Lithuanian authorities agree that home and host country authorities should inform each other upon request and to the extent reasonable on other prudential issues. The requested information shall be provided no later than within 30 days after the receipt of the request.



II. ESTABLISHMENT OF A CROSS-BORDER ESTABLISHMENT

(1) Licensing requirements

12. In the spirit of the Basle Documents, the Estonian and Lithuanian authorities agree that when a credit institution authorised in the country of one Party applies for a permission (licence) to be issued by another Party to establish a cross-border establishment of a credit institution, the Parties shall consider such applications only upon a written consent of the home state supervisory authority. Particularly, there shall be prior consultation with the competent authorities of the other country involved in the authorisation of a credit institution which is:

a subsidiary of a credit institution authorised in the other country, or
a subsidiary of the parent undertaking of a credit institution authorised in the other country, or
controlled by persons, whether natural or legal, who also control a credit institution authorised in the other country.

13. Before granting the authorisation for a cross-border establishment, the authorities, on the basis of mutual confidence shall furnish each other with additional information necessary to adopt the final decision, including *inter alia* the information on

fitness of the management;
accounting standards;
requirements as regards internal controls;
own funds;
supervision of capital adequacy;
supervision of risks arising out of open positions on markets;
large exposures;
qualifying holdings;
owner control;
all other domestic banking legislation.

14. The home country authorities shall inform the host country authorities concerning these issues.

15. When adopting decisions on the issue of permissions (licences) to establish a cross-border establishment of a credit institution authorised by the other Party, the Parties shall be guided by the requirements provided for in the respective national legislation and shall take into consideration the information received from the other Party.



16. The Parties shall inform each other in writing on the decision adopted concerning the issue of permission (licence) to establish a cross-border establishment of a credit institution authorised in country of the other Party.
17. The home country authorities will see that a credit institution with several places of business established in the host country specifies one place of business as the head office, the managers of which are obliged to answer to the host country authorities.
18. The host country authorities shall have free discretion to require the head office to file a written notice of any place of business to be established in their territory.

(2) Notices of change

19. In the event of a change in any of the particulars communicated pursuant to the programme of operations setting out, *inter alia*,
 - the types of business envisaged and the structural organisation of a cross-border establishment,
 - the names of those responsible for the management of the cross-border establishment,

the home country authority ensures that a credit institution or its cross-border establishment shall give a written notice of the change in question to the host country authority.

In the event of change in the deposit-guarantee scheme which is intended to ensure the protection of depositors of the branch, the home country authority shall give a written notice of the change in question to the competent authorities of the host country. If it is possible the notice shall be given at least one month before the enforcement of the change or within a reasonable period of time.

20. If the notice refers to a change in the management of the cross-border establishment, the Estonian and Lithuanian authorities will use the one-month interim period between the notice and the occurrence of the change to exchange information on the fitness of the designated manager of the cross-border establishment.

III. QUALIFYING HOLDING AND OWNER CONTROL

21. Within the present Memorandum of Understanding a qualifying holding is defined as a direct or indirect holding in an undertaking which represents 10 per cent or more of the capital or of the voting rights or which makes possible the exercise of significant influence over the management of the undertaking in which a holding exists.



22. In case a credit institution or a parent company of a credit institution authorised in the country of one Party or a natural or legal person controlling the credit institution authorised in the country of one Party proposes to acquire or manage a qualifying holding in a credit institution authorised in the country of the other Party, the Parties shall inform each other about the said and, upon request provide the other Party with the necessary information. Prior consultations between the Parties shall be held in case the earlier mentioned person applies for a permission to increase the qualifying holding to the level when the national legislation of the respective Party provides for a notice to or a permission of the credit institutions' supervision authority. Also a notification should be made between the authorities, if the holder of a qualifying holding intends to reduce the holding below the extent provided in the legislation of the respective country.
23. The Estonian and Lithuanian authorities shall provide each other with information upon request and to the extent legally possible of domestic enterprises which own qualifying holdings in the credit institutions incorporated in the country of the other Party. The information shall include all relevant facts pertaining to the shareholding enterprise itself and to the ownership structure as a whole.

IV. COOPERATION IN THE FIELD OF OFF-SITE SUPERVISION

24. The home country supervisory authority shall supervise branches established in the host country in conformity with the laws and other legal acts of the home country.
25. The host country credit institutions' supervision authority shall perform the off-site monitoring of branches in conformity with the laws and other legal acts of the host country.
26. The host country supervisory authority, on identification of non-compliance by the branch with the laws and other legal acts regulating the activities of credit institutions, shall advise the branch on the violations made by them, notify them of the legal situation and require compliance with the appropriate legal acts, as well as inform the home country supervisory authority. The latter will take adequate measures to encourage the compliance with the requirements and inform the host country supervisory authority of the nature of such measures. Notwithstanding the above-mentioned, the host country supervisory authorities of the branches of credit institutions shall preserve the power to take adequate measures *vis-a-vis* that branch.



27. The host country credit institutions' supervisory authority shall perform the supervision of subsidiaries in conformity with the laws and other legal acts regulating the activities of the host country credit institutions.
28. The host country supervisory authority shall neither hinder cross-border establishments from providing accountability to their parent credit institution necessary for the consolidated accountability to be made up according to the formats established in the home country, nor from providing accountability in case of an inquiry by the home country supervisory authority.
29. The host country supervisory authority may upon request of the home country supervisory authority furnish additional information on the subsidiaries situated within its jurisdiction necessary for performing the supervision of the credit institution on a consolidated basis.
30. The Parties shall notify each other without delay of a pending crisis in a credit institution having cross-border establishments in the country of the other Party. The same applies if a crisis is limited to a branch but may lead the institution as a whole to insolvency. Prior to taking any actions provided for in the national legislation against a cross-border establishment, the Parties shall, when possible, apply the procedure described in art. 26. When necessary, the Parties are entitled to act without delay.
31. The Lithuanian and Estonian authorities will contribute to the prevention of money laundering adhering thereto to the respective international instruments as well as their domestic legislation.

V. COOPERATION IN THE FIELD OF ON-SITE INSPECTIONS

32. The Estonian and Lithuanian authorities will remain free to determine their own auditing standards and to appoint and assign commissioned auditors as well as their own staff of inspectors. Neither the host country authority nor the involved credit institution may object to an inspection in a cross-border branch instituted by the home country authority.
33. The home country authority shall inform in advance the host country authority about a planned on-site inspection in a branch. The notification shall comprise the name of the inspector, name of the branch, objective of the inspection, expected date of commencement and duration of the inspection. The home country authority, after completion of the inspection in a branch, upon request or if they consider it necessary shall provide the host country authority with the abbreviated information on the general financial condition of the branch,

identification of non-compliance with the legal acts and violations made as soon as it is possible within one month after the completion of the inspection, at the latest.

34. Prior to the on-site inspection in a cross-border branch or subsidiary, the host country authority shall notify of such inspection the home country authority. In case the home country authority decides to participate in a cross-border branch or subsidiary on-site inspection, upon the mutual consent between both authorities regarding the composition of the home country authority representatives' group, types and forms of an inspection, official documentation of inspection results and exchange of information, the representatives of the home country authority shall be able to participate in the inspection.
35. If necessary the host country supervisory authority shall provide assistance to the home country supervisory authority in organising and performing on-site inspections in the cross-border branch.
36. In serious cases meetings may be arranged in the course of an inspection at the request of the inspector or either authority. Either authority may request a discussion of the findings.
37. After completion of an inspection in a branch or a subsidiary, the host country authority, in case the home country authority did not participate in the inspection, upon request or if they consider it necessary, shall provide the home country authority with the abbreviated information on the general financial condition of a branch or a subsidiary, identification of non-compliance with the legal acts and violations made as soon as it is possible within one month after the completion of an inspection, at the latest.

VI. CLIENTS COMPLAINTS

38. Complaints lodged by the customers about the cross-border establishments with the host country authority shall be examined by the latter. If necessary, it will pass over its findings to the home country authority. The host country authority may pass over to the home country authority complicated cases requiring special expertise or investigation by the latter.
39. Complaints lodged with the home country authority shall be examined by the latter. If necessary, it shall consult with the host country authority and, finally, inform the latter about its decision.



VII. TECHNICAL ARRANGEMENTS

40. If not provided otherwise by subsequent agreements, the Parties shall correspond with each other in English. As to the language to be used during meetings and other arrangements, it shall be agreed case by case.

41. The Estonian and Lithuanian authorities will exchange on a regular base lists of the following:

the credit institutions which they have authorised and which transact business within the territory of the other Party through cross-border establishments; the lists should also include information concerning head offices defined in Chapter II and managers of the cross-border establishments;

the credit institutions which they have authorised and in which enterprises incorporated in the country of the other Party have direct holdings of more than 10%;

cross-border establishments of credit institutions authorised in one country that operate in the other country.

42. The Estonian and Lithuanian authorities agree that it would be desirable to hold regular meetings in order to discuss the implementation of this Memorandum of Understanding and questions relating to the different credit institutions established in both countries and under their respective supervision and other relevant issues. The Estonian and Lithuanian authorities will once a year consider the necessity of such a meeting. Employees who participate in the co-operation should convene once a year to such meetings to discuss fundamental issues including the enhancement of the co-operation. Such meetings shall provide a forum to analyse problematic cases, identify the options and prepare proposals to the decision-making bodies of the Estonian and Lithuanian authorities, and settle disputes between them. Between such meetings *ad hoc* meetings can be arranged as needed.

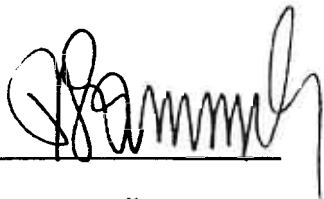
43. Both Parties shall appoint one person responsible for keeping mutual contacts and solving the issues of concern and exchange the lists of contact persons with contact persons' language skills indicated.

44. The Parties undertake to revise the Memorandum of Understanding in accordance with the amendments of the national legislation or if the supervision of credit institutions so requires.



45. The present Memorandum of Understanding shall become invalid in the event of mutual decision by the Parties that the Memorandum of Understanding no longer satisfies its objectives, or if either Party declares that they will no longer fulfil the Memorandum of Understanding notifying the other Party of its intention six months prior to the date of non-fulfilment of this Memorandum of Understanding.
46. The Authorities agree to delegate the powers and rights of this Memorandum of Understanding to their successors, giving a written notice one month prior to the enforcement of the respective decision.
47. The present Memorandum of Understanding has been drafted in two originals both in the Lithuanian and English languages. In the event of disagreements on the interpretation of the text, the English version shall prevail.

On behalf of the Bank of Lithuania



Reinoldijus Šarkinas
Chairman of the Board

9 March 2001

On behalf of the Bank of Estonia



Vahur Kraft
Governor of the Bank of Estonia



Andres Trink
Head of the Banking Supervision
Department

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