

Memorandum of Understanding

between

**THE ESTONIAN INSURANCE SUPERVISORY AUTHORITY
AND
THE INSURANCE SUPERVISORY AUTHORITY IN FINLAND**

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Memorandum of Understanding

The Estonian Insurance Supervisory Authority and The Insurance Supervisory Authority in Finland (hereinafter the Participating Authorities)

hereby agree to base their cooperation regarding supervision of insurance undertakings on the principles and procedures laid down in this Memorandum of Understanding, as

Referring to the documents issued by International Association of Insurance Supervisors (IAIS);

Insurance Core Principles, October 2000

Principles Applicable to the Supervision of International Insurers and Insurance Groups and their Cross-Border Business Operations, December 1999

Principles for the Conduct of Insurance Business, December 1999

Principles on the Supervision of Insurance Activities on the Internet, October 2000
(hereinafter Principles of IAIS)

Recognizing that no foreign insurers should escape supervision and that the supervision should be adequate,

Willing to facilitate the performance of their respective duties and promote the safe and sound functioning of cross-border insurers 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 exchange of information will contribute to increased mutual understanding and co-operation between the Participating Authorities,

Conscious that exchange of information is an essential element of the bilateral relationship between the Participating Authorities,

Having agreed to supervise the insurers transacting cross-border business in Participating Authorities according to the legal framework applicable in Participating Authorities in the spirit of close collaboration and mutual trust.

The Participating 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 insurers and their cross-border establishments.

1. GENERAL PROVISIONS

1.1 GENERAL FRAMEWORK

By this memorandum, the Participating Authorities commit themselves to co-operate on a best-effort basis on all discretionary matters pertaining to cross-border insurance establishments. For the purposes of this memorandum, the Participating Authorities shall deem any branch, subsidiary, related company or holding company of insurers of both countries to be a cross-border establishment.

1.2 SUPERVISORY AUTHORITIES

Estonia

The Insurance Supervisory Authority supervises insurance and pension insurance undertakings. The Estonian Insurance Supervisory Authority is organisationally subordinated to the Ministry of Finance.

In Estonia an insurer wishing to establish a branch shall apply for respective approval from the Minister of Finance.

An application together with respective documents shall be submitted to the Insurance Supervisory Authority. In case Estonia is accepted as a member state of the European Union, section 95.1 of the Insurance Activities Act will come into force, allowing persons authorised to write insurance business by the competent authority of a member state of the European Union to act as insurers in Estonia.

The Financial Supervisory Authority of Estonia subordinated to the Bank of Estonia will be the successor of the Estonian Insurance Supervisory Authority as of 1.1.2002.

Finland

The Insurance Supervisory Authority supervises insurance and pension undertakings as well as other undertakings handling insurance business. From an administrative point of view the Insurance Supervisory Authority comes under the Ministry of Social Affairs and Health.

In Finland, an insurer from a non-EEA state wishing to establish a branch shall apply for permission from the Ministry of Social Affairs and Health. All documents and accounts deemed indispensable by the Ministry shall be submitted with the application.

1.3 PROFESSIONAL SECRECY

Compliance with the obligation for professional secrecy by all employees who receive classified information in the course of their activities is absolutely necessary in order to create an atmosphere of trust in the co-operation between the Participating Authorities.

Information received from authorities 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. Beyond that it may not be given to third parties without the prior consent of the respective authorities.

2. CROSS-BORDER ESTABLISHMENTS

2. LICENSING REQUIREMENTS

In the spirit of the Principles of IAIS, the Participating Authorities agree that consent for the creation of a cross-border establishment can be given by the host country authority only after it has been given by the home country authority.

2.2 PRACTICAL PROCEDURES

The conditions that must be met for the cross-border establishment shall be the consent of the insurance supervisory authority of the home country of the insurer to the setting up or acquisition of a cross-border insurer in the host country and confirmation that the insurer holds a valid authorization or a valid licence. In particular, there shall be prior consultations with the competent authorities of the other country involved in the authorization of an insurer which is:

- a subsidiary or a branch of an insurer authorized in the other country;
- a subsidiary or a branch of the parent undertaking of an insurer authorized in the other country;
- or
- controlled by persons, whether natural or legal, who also control an insurer authorized in the other country.

Before granting the authorization for a cross-border establishment, the home country authorities shall ensure that the insurer fulfils adequate standards regarding, *inter alia*, the following:

- fitness and propriety of the management;
- accounting standards;
- internal controls;
- supervision of solvency;
- qualifying holdings;
- owner control;
- all other requirements provided for in domestic legislation.

The home country authorities shall inform the host country authorities about these issues.

Before granting the authorization, the host country authorities shall ensure that the home country authorities have given their consent to the establishment of a subsidiary or a branch.

2.3 NOTICES OF CHANGE

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 organization of the cross-border establishment,
- and
- the names of those responsible for the management of the cross-border establishment,

the home country authority shall ensure that an insurer or its cross-border establishment gives written notice of the change in question to the competent authorities of the host country.

If the notice refers to a change in the management of the cross-border establishment, the Participating Authorities shall use the ten day interim period between the notice and the implementation of the change to exchange information on the fitness and properness of the designated manager of the cross-border establishment.

3. CO-OPERATION CONCERNING SUPERVISION

3.1 EXCHANGE OF INFORMATION

The Participating Authorities hereby declare that they are willing to exchange information to the extent that national law makes this possible, in order to support and improve the effectiveness of their supervision. Written contact shall be made whenever the supervisory authority of the home member state or the supervisory authority of the host member state - based on relevant matters or developments - considers it useful or necessary for its own or mutual purposes of supervision. Further, any existing additional information may be exchanged on request.

CO-OPERATION WITHIN SPECIAL FIELDS OF SUPERVISION

Market information

The Participating Authorities shall assist each other in providing a proper assessment of market risks in their respective markets and shall on a regular basis discuss market developments. Further, they shall without delay inform each other of any imminent crisis which might affect the domestic capital market in general (e.g. crises which will require a close-down of the stock exchange or a general moratorium for the banking industry).

The supervisory authority of the host member state shall communicate any violation of the market rules to the supervisory authority of the home member state if such information might be of importance to the supervisory authority of the home member state. The supervisory authority of the home member state shall, if necessary, inform the supervisory authority of the host member state of any action taken on the basis of such information.

3.2.2 Violation of host member state legislation

The Participating Authorities shall inform each other when they become aware that the activities of a branch violate the host member state general legislation or statutory provisions adopted in the interest of the general good, to the extent that such violation is important from a supervisory point of view. This shall not affect any measures taken by the host member state in connection with a crisis in order to effect restructuring or liquidation of a branch pursuant to the national legislation of the member state concerned.

Reporting obligations; supervisory reporting

The host country shall retain the right to impose reporting obligations on cross-border establishments, either in the interest of the general good or in those areas in which it retains supervisory control.

Prevailing general law of the host country; code of conduct; priority of the general good

The Participating Authorities understand that the cross-border establishment has to observe the generally applicable legal provisions of the host country.

The host country has the power to take appropriate measures to prevent or take legal action against irregularities that are contrary to the legal rules it has adopted in the interest of the general good. This shall include the power to prevent offending institutions from initiating any further transactions within its territory.

3.2.5 Money laundering

The Participating Authorities shall contribute to the prevention of money laundering observing the relevant international instruments as well as the domestic legislation of either side.

With regard to insurers, their subsidiaries and other institutions included in their consolidated groups located abroad, the local legislation shall be applicable, provided that the local provisions governing money laundering are comparable in terms of their stringency to the legislation of the country of origin.

3.2.6 Insurance customer complaints

Complaints about a particular insurer providing services lodged by customers with the host country authorities shall be handled by the latter on their own responsibility. They shall be free to correspond directly with the cross-border establishment. They shall, if necessary, pass on their findings to the home country authorities. The host country authorities are free to turn over to the home country authorities complex cases calling for the special expertise and knowledge of the latter.

The latter shall handle complaints lodged with the home country authorities. If the particular conditions in the host country are relevant, the home country authorities shall consult with the host country authorities, and in due course advise them of their decision.

4. CO-OPERATION CONCERNING ON-SITE INSPECTIONS

The Participating Authorities shall 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 authorities nor the insurer concerned may object to an inspection instituted by the home country authority.

The Participating Authorities intend to carry out on-site inspections, either by their own staff or commissioned auditors. As host country authorities they do not intend to carry out on-site inspections on behalf of the home country authority. The host country authorities have the right to assist the inspector to a reasonable extent if the inspector encounters resistance from the cross-border establishment.

The home country authorities shall notify the host country authorities 30 days in advance of any on-site inspection instituted by themselves in a cross-border establishment in the host country. The notification shall comprise the following information:

- name(s) of the inspector(s);
- name of the cross-border establishment;
- aim of the inspection;
- expected date of commencement and duration of the inspection.

The home country authorities shall advise the inspector to make a visit to the host country authorities concerned prior to commencement of the inspection. The inspector can be required to do so by the host authorities concerned. The inspector may additionally contact supervisors in the host country to request supervisory information on the cross-border establishment.

When the inspector has concluded the audit of the cross-border establishment, he or she shall inform the host country authorities that the inspection has been concluded and shall, upon request, inform the same authorities of his or her main findings.

The inspector shall submit his or her report to the home country authorities; the latter shall furnish the host country authorities with either a copy or an abridged version of the report in English or in the language of the host country. If the insurer itself, together with its cross-border establishments, is subject to audit, the host country authorities shall receive a summary of such findings as are relevant to the cross-border establishment.

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.

5. CO-OPERATION CONCERNING OWNER CONTROL

There should be prior consultation between the Participating Authorities if any legally entitled person or body corporate proposes to acquire, directly or indirectly, a qualifying holding in an insurer authorized in the other country.

If the acquirer of holdings is an insurer authorized in the other country or the parent undertaking of an insurer authorized in the other country and if, as a result of that acquisition, the institution in which the acquirer proposes to acquire a holding becomes a subsidiary or subject to the control of the acquirer, the assessment of the acquisition must be subject to prior consultation with the competent authorities of the other country.

In this context a qualifying holding is defined as a direct or indirect holding in an undertaking which represents ten per cent or more of the capital or the voting rights or which makes possible the exercise of significant influence over the management of the undertaking in which a holding exists.

There must also be prior consultation between the Participating Authorities if any legally entitled person or body corporate as referred to in the previous paragraph proposes to increase the qualified holding so that the proportion of capital or the voting rights held by the holder of a qualifying holding would reach or exceed twenty per cent, thirty-three per cent or fifty per cent. Notification shall also be made between authorities if the holder of a qualifying holding intends to reduce the holding below one of the levels mentioned in the previous sentence.

The Participating Authorities shall inform each other upon request and to the extent legally possible of domestic enterprises which have direct holding of more than ten per cent in the insurer(s) incorporated in the other country. The information shall include all relevant facts pertaining to the shareholding enterprise itself and to the ownership structure as a whole.

6. CRISES

The Participating Authorities shall immediately notify each other if they become aware of an imminent crisis affecting a cross-border establishment of an insurance undertaking or parent undertaking which might result in the insolvency of the undertaking or the entire group.

The supervisory authority of the host member state shall in any event cooperate with the supervisory authority of the home member state if the supervisory authority of the home member state adopts supervisory countermeasures.

7. TECHNICAL ARRANGEMENTS

LANGUAGES

Unless anything to the contrary is laid down in this or any subsequent Memorandum of Understanding, the Participating Authorities shall correspond with each other in their official language and in English.

EXCHANGE OF LISTS

The Participating Authorities shall provide each other with organizational charts.

Further, the Participating Authorities may, on a regular basis and to the extent possible, exchange the following lists of

insurance undertakings, which have been granted authorization and which carry on activities in the other member state territory through cross-border establishments,
insurance undertakings, which have been granted authorization and in which undertakings registered in the other member state have direct holdings of more than ten per cent.

The following information shall be updated, if necessary:

principal responsible supervisory authorities in charge of the supervision of insurance undertakings (see 1.2 above),
major changes regarding the domestic supervisory provisions and the supervision policy (see 3.1 above).

7.3 MEETINGS

The Participating Authorities hereby agree that meetings should be held on a regular basis in order to discuss various questions regarding the insurance undertakings established in several countries and the supervision thereof.

8. TERMINATION

This Memorandum will continue to have effect unless terminated by one of the Authorities by giving thirty days advance written notice to the other Authority that the understanding set out herein are no longer to have effect.

9. EFFECTIVE DATE

This Memorandum of Understanding shall take effect when it has been signed by the Participating Authorities.

For Insurance Supervisory Authority
(Estonia):



(Director General)

August 16th, 2001

For Insurance Supervisory Authority
(Finland):



Hely Salomaa
(Director-General)

August 16th, 2001