

Memorandum of Cooperation on Trans-Tasman Bank Distress Management

Purpose of the Memorandum of Cooperation

The purpose of this Memorandum of Cooperation (henceforth Memorandum) is to assist the participants in achieving a coordinated response to financial distress in any bank or banking group that has significant operations in Australia and New Zealand (referred to as a 'trans-Tasman bank') in a manner that avoids, where practicable, instability in the financial systems of Australia and New Zealand and promotes an effective resolution. The Memorandum does not pre-commit to, or rule out, any particular resolution option.

The Memorandum sets out principles to which the participants will have regard in the decisions they take, and in the advice, they will provide when faced with financial distress in a trans-Tasman bank. As such it is not intended to bind the participants in any way. Rather, the Memorandum provides a broad framework to promote and facilitate a coordinated response to a distressed trans-Tasman bank, and to allocate responsibility for particular elements of the response.

The Memorandum is not governed by international law and does not create legal relations between the participants to the Memorandum. Nothing in this Memorandum constitutes, directly or indirectly, a guarantee, indemnity or warranty to any person by any of the participants in the Memorandum.

The Memorandum replaces the Memorandum of Cooperation on Trans-Tasman Bank Distress Management dated September 2010 between the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC), the Australian Department of the Treasury (Australian Treasury), New Zealand Treasury, Reserve Bank of Australia (RBA) and Reserve Bank of New Zealand (RBNZ).

Participants to the Memorandum of Cooperation

The participants in the Memorandum are:

- The member agencies of the Australian Council of Financial Regulators (the CFR):
 - APRA
 - ASIC
 - Australian Treasury
 - RBA
- The agencies in New Zealand responsible for responding to financial system distress:
 - Financial Markets Authority (FMA)

- New Zealand Treasury
- RBNZ

In this Memorandum, unless otherwise indicated, reference to the 'participants' is a reference to the Australian and New Zealand participants. References to home country means the country where the trans-Tasman bank is headquartered ('parent bank'), while host country means the country where the trans-Tasman bank has material foreign operations ('subsidiary').

Responsibilities of the participants to the Memorandum of Cooperation

Australia

In Australia, the CFR provides the forum for facilitating coordination among the members in order to ensure prompt and effective identification of, and responses to, developments that pose a threat to the stability of the financial system. It is also the forum within which the Australian response to the distress of a trans-Tasman bank will be coordinated. Further detail on the processes by which the four Australian agencies will deal with distress in the Australian financial system are contained in a memorandum of understanding between the CFR agencies, signed in September 2008.

The responsibilities of each member for dealing with stress in the financial system are as follows:

- **Australian Treasury.** The Australian Treasury provides advice to the Government on policy and possible reforms that promote a sound financial system, including on financial distress management arrangements. The Australian Treasury has responsibility for advising the Government on matters relating to the exercise of the Treasurer's powers, and on the broader economic and fiscal implications of developments that pose a threat to the stability of the financial system. In the case of a trans-Tasman bank distress situation where Australia is the home country, the Australian Treasury has lead responsibility for advising the Australian Government on any responses that, for example, involve the exercise of powers by the Australian Government.
- **APRA.** APRA is the prudential supervision and resolution authority for much of the Australian financial services sector, including authorised deposit-taking institutions (banks). In performing its functions, APRA is required to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, is to promote financial system stability in Australia. As the resolution authority, APRA has crisis management powers at its disposal to respond effectively and promptly to resolve a distressed institution. APRA is also responsible for administering the Financial Claims Scheme (FCS).

In the case of a trans-Tasman bank distress situation where APRA is the home regulator, it has lead responsibility as it pertains to the Group, for: assessing its financial condition, exercising supervisory powers, coordinating a Crisis Management Group, assessing resolution options, preparing resolution plans including requiring pre-positioning, and using crisis management powers to facilitate an orderly resolution.

- **RBA.** The RBA has responsibility for contributing to the stability of Australia's financial system, including stability of the payments system, and for providing liquidity support to the financial system or to individual financial institutions where appropriate. In the case of a trans-Tasman bank distress situation where Australia is the home country, the RBA has responsibility for assessing the impact of the distress and the possible response options on the Australian financial system, and for providing liquidity to the parent bank in Australia where appropriate.
- **ASIC.** ASIC is responsible for monitoring, regulating and enforcing corporations and financial services laws, and for promoting market integrity and consumer protection across the financial services sector and the payments system.

In the case of a trans-Tasman bank distress situation where Australia is the home country, ASIC has lead responsibility for assessing and advising on the Corporations Act-related regulatory implications, consumer protection issues and market integrity, of any resolution option in respect of the parent bank.

New Zealand

In New Zealand, the RBNZ has principal responsibility for protecting and promoting the stability of the New Zealand financial system. The New Zealand Treasury has principal responsibility as the Government's lead economic and financial advisor. In the trans-Tasman distress management context, this would include advice on the potential provision of Government assistance. The New Zealand Treasury and the RBNZ would also coordinate the New Zealand response to the distress of a trans-Tasman bank. The FMA has principal responsibility for market conduct to ensure that consumers are adequately informed and that market participants act with integrity.

Under New Zealand legislation,¹ statutory powers are conferred on the RBNZ and the Minister of Finance to manage a bank distress or failure situation.² As any decisions may have financial implications for the Crown, the RBNZ will consult with Treasury on recommendations to be brought to the Minister, given Treasury's role as the Government's primary economic and financial advisor. The RBNZ also consults and co-ordinates with the FMA, particularly on issues relating to the supervision of financial institutions and on consumer outcomes.

The responsibilities of the respective agencies are:

- **New Zealand Treasury.** The New Zealand Treasury is the Government's primary economic and financial advisor. The New Zealand Treasury has responsibility for providing economic and strategic advice to the Government on the impact of financial distress arrangements on fiscal management, and broader government objectives such as economic growth and international connections. The New Zealand Treasury also has a central agency role in providing advice on institutional design and whole-of-government policy coherence. In the case of a trans-Tasman bank distress situation, the

¹ The *Deposit Takers Act 2023* will repeal and replace the Banking (Prudential Supervision) Act 1989.

² In some instances, powers would be exercised by the Governor General through Orders in Council.

New Zealand Treasury would be responsible for providing policy advice regarding the need for Crown support and the appropriate form of Crown support.

- **RBNZ.** The RBNZ is responsible for protecting and promoting the stability of the financial system. RBNZ's functions include the prudential licensing and supervision of deposit takers, insurers and Financial Market Infrastructures (FMIs), providing liquidity to the banking system, monitoring the stability of the financial system and acting as the Resolution Authority (under the *Deposit Takers Act 2023*). In order to avoid damage to the financial system arising from the failure of a deposit taker, the RBNZ is able to draw on emergency powers including to act as lender of last resort, give directions to a deposit taker, and to place a deposit taker in resolution.
- **FMA.** The FMA is an independent Crown entity and New Zealand's principal conduct regulator of financial markets. Its overarching statutory purpose is to promote and facilitate the development of fair, efficient and transparent financial markets. The FMA influences how participants behave towards their customers, investors, and each other through its core functions of licensing, supervision, and enforcement. In the case of a trans-Tasman bank distress situation, the FMA will work collaboratively with the RBNZ to protect investors, consumers, and the integrity of financial markets.

Principles for responding to the financial distress of a trans-Tasman bank

In recognition of the need for a coordinated approach to managing distress in a trans-Tasman bank, and in the situation where resolution is contemplated, the participants to this Memorandum have decided on the following principles to guide a response:

- (a) Consistent with the legislation in both countries³, the participants in responding to trans-Tasman bank distress or resolution, will, to the extent reasonably practicable, avoid any actions that are likely to have a detrimental effect on the stability of the other country's financial system. This includes maintaining international confidence in each other's financial systems. Both countries will seek to coordinate their responses to these ends.
- (b) A co-ordinated, co-operative approach involving the participants is likely to lead to a more cost-effective outcome and a more effective means of maintaining financial system stability in both countries than one in which the respective participants pursue separate approaches. The participants will therefore seek to cooperate, where practicable, in respect of all stages of a trans-Tasman distress situation, including problem identification; information sharing; systemic impact analysis; assessment of response options; implementation of resolution; and public communication.

³ In Australia, the *Australian Prudential Regulatory Authority Act 1998* and the *Banking Act 1959* contain provisions that oblige APRA, to the extent reasonably practicable, to avoid any actions that are likely to have a detrimental effect on the stability of the New Zealand financial system. In New Zealand, the *Banking (Prudential Supervision) Act 1989* and the *Deposit Takers Act 2023* contain provisions that oblige the RBNZ, to the extent reasonably practicable, avoid any action that is likely to have a detrimental effect on financial system stability in Australia.

- (c) The exact nature of any response pursued by the respective participants will depend on the specifics of the particular situation.
- (d) For systemically important banks, the participants will implement options for a resolution that is most likely to be conducive to maintaining stability and confidence in the financial systems of both countries.
- (e) Private sector solutions that achieve the outcomes in (d) above are preferred over options that use public funds. Participants will take steps to prepare for private sector solutions well in advance of distress that will help to facilitate the orderly resolution.
- (f) Public sector support may be required in some cases, particularly where a trans-Tasman bank is severely under-capitalised or insolvent, or is under acute stress due to a fall in market confidence, and there appears to be no prospect of private capital support in the required timeframe. Public sector support may involve government guarantees, recapitalisation or liquidity support, or a combination of these.
- (g) Any response to a bank distress situation that involves government support will be designed, to the extent practicable, to: protect taxpayer funds; maintain market discipline; and minimise moral hazard.
- (h) In a situation where a parent bank is able to provide financial support, including recapitalisation, to its subsidiary, and where the parent bank is satisfied that providing such support is in its commercial interests, home country participants will encourage this support, provided that it does not compromise the financial soundness of the parent bank.
 - (i) In a situation where the parent bank is not able to provide financial support to its subsidiary without compromising the parent bank's financial soundness, home country participants will take the lead in reviewing options for the parent bank and its foreign operations outside of Australia and New Zealand, in conjunction with local authorities where relevant. Host country participants will take the lead in reviewing options for the subsidiary.
 - (ii) Any public support arrangements will need to be accompanied by measures that enable the Australian and New Zealand Governments to exercise an appropriate degree of control over the respective bank(s). Any solution involving a coordinated approach needs to be acceptable to both countries' Governments.
 - (iii) The home country's Government is responsible for public announcements of public sector support for the parent and the host country's Government is responsible for public announcements of public sector support for the subsidiary. The timing of any statements by public sector agencies will need to be coordinated where appropriate, given the pressure that announcements in one country could have on the other. The participants consider that 'statements of confidence' in a trans-Tasman bank by public sector agencies in either country

risk being seen as tantamount to the provision of financial support, with the potential for spillovers to the other country.

- (i) Each country remains responsible for the manner in which creditor claims are resolved in its jurisdiction, consistent with the objective of maintaining stability and confidence in both countries' financial systems.

Coordination of response to trans-Tasman bank distress

In accordance with the above principles, the participants to this Memorandum will cooperate to promote a coordinated response to the distress of a trans-Tasman bank. A contact list of officials in the Australian and New Zealand agencies that are responsible for financial crisis management has been developed to facilitate timely communication and coordination. This coordination will include the following measures:

- (a) **Information sharing and early warning alerts.** The participants will keep each other apprised of any developments or expected developments that may have material impact on either country's financial system. APRA and the RBNZ will maintain systems that enable them to detect emerging stress in a trans-Tasman bank and will alert each other if they become aware of any such stress.
- (b) **Establishment of Crisis Management Groups.** Participants may agree to establish a Crisis Management Group (CMG) for a trans-Tasman bank. Where established, the CMG will be a forum to advance cooperative crisis management preparation prior to distress and align effective resolution options. The CMG will maintain a close relationship with the senior leadership of each participant to ensure consistent strategic direction and approach to resolution planning and crisis management.
- (c) **Diagnosis of bank distress.** In a situation where a trans-Tasman bank is in distress or likely to become distressed, the participants, working closely with the CMG, will coordinate the process of investigating and assessing the bank's condition. Where practicable, analysis of solvency and liquidity, and other matters relevant to an assessment of the bank's condition, will be conducted on the basis of similar analytical frameworks by APRA, RBA and RBNZ. The agencies will exchange information in a timely manner to facilitate a coordinated assessment of the trans-Tasman bank's group position.
- (d) **Diagnosis of systemic impact.** The two central banks, in liaison with the other participants, will provide each other with their assessment of the potential impact on the stability of their respective countries' financial systems that could result from distress of a trans-Tasman bank. The participants will exchange such information in a timely manner.
- (e) **Holding actions.** Where a trans-Tasman bank is in financial distress or likely to become distressed, the participants will coordinate any holding actions taken to restrict further deterioration. In particular, APRA and the RBNZ will coordinate the nature of any supervisory actions they may intend to take to restrict further deterioration, with a view to minimising adverse impact on either country's financial systems and promoting an effective response to the situation.

- (f) **Assessment of response options.** The participants will coordinate the assessment of possible response options, including their assessment of the potential systemic impact of such options. Home country participants will have lead responsibility for assessing possible responses to address the parent bank's distress (and its operations outside of Australia and New Zealand), including assessing the systemic impact of those responses. Host country participants will have lead responsibility for assessing possible responses to address a subsidiary's distress, including assessing the systemic impact of those responses. The participants will cooperate to promote an effective group-wide response to the situation, with a view to avoiding or minimising instability in either country's financial system.
- (g) **Liquidity support.** If central bank liquidity support is required as part of the response to a trans-Tasman bank distress situation, the RBA and RBNZ will coordinate the provision of liquidity support. Both countries' central banks will cooperate to ensure that their respective banking systems can also obtain liquidity in the other country's currency, should that be necessary. The RBA has responsibility for any liquidity support provided to Australian bank operations, and the RBNZ has responsibility for any liquidity support provided to New Zealand bank operations.
- (h) **Government guarantee.** If the Australian and New Zealand Governments agree that a government guarantee is required as part of the response to a trans-Tasman bank distress situation, the Australian Treasury and New Zealand Treasury will coordinate the provision of the guarantee. The home country's Treasury has responsibility for the design and implementation of a guarantee of specified financial obligations of the parent bank (including of its foreign operations beyond the host country), and the host country's Treasury has responsibility for the design and implementation of a guarantee of specified obligations of the subsidiary. The terms and conditions applicable to the guarantees will be coordinated, with a view to maintaining an effective resolution and coordinated exit from the guarantee.
- (i) **Capital support.** If the Australian and/or New Zealand Governments provide or facilitate capital support as part of a response to a trans-Tasman bank distress situation, the participants will coordinate the recapitalisation process. Coordination will include consideration of the level of recapitalisation required of the parent bank and subsidiary respectively, the nature of capital provided, and the terms and conditions attaching to the provision of capital. Home country participants will have responsibility for the design and implementation of capital support to the parent bank and host country participants will have responsibility for the design and implementation of capital support for the subsidiary.
- (j) **Government control over a trans-Tasman bank.** Where a decision has been made by the Australian and/or New Zealand Governments to provide capital or other forms of financial support to a trans-Tasman bank, the participants will advise the respective Governments to establish and maintain an appropriate degree of control over the banking group in order to ensure that risks associated with such support are prudently managed and that the respective Governments have control over the process of exiting from the support arrangements. The Government that has provided the capital or

other form of financial support will generally have the responsibility for ensuring that it has a satisfactory level of control over the entity or entities to which it has provided the support.

- (k) **Public communications.** Any public communications associated with the response to a trans-Tasman bank distress situation will be coordinated between the participants. Public communication of measures involving government-funded or facilitated support will be made by the home country's Government in respect of the parent bank and by the host country's Government in respect of the subsidiary. Communications on resolution measures and impact on consumers will be made by the home resolution authority in respect of the parent bank and by the host resolution authority in respect of the subsidiary. Communications on liquidity support will generally be made by the home country's central bank in respect of the parent bank and by the host country's central bank in respect of the subsidiary.
- (l) **Exit from government support or ownership.** In the event that capital support was provided, to assist in the orderly and effective exit from any government ownership or support of a trans-Tasman banking group, it will generally be appropriate to terminate government guarantee arrangements in respect of financial obligations of the parent bank and subsidiary in a coordinated way. Similarly, the sale of government owned shares or other forms of capital in the parent bank and subsidiary will generally be coordinated.

Testing of trans-Tasman crisis management coordination

The participants will take initiatives to test the adequacy of trans-Tasman financial crisis management coordination. This Memorandum and its associated Terms of Reference will be reviewed at least once every five years having regard to the lessons learned from such testing.

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