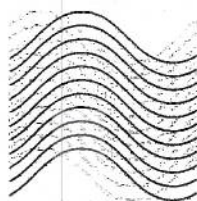




National Bank of Serbia



BaFin

Bundesanstalt für  
Finanzdienstleistungsaufsicht

**MEMORANDUM OF UNDERSTANDING BETWEEN THE NATIONAL BANK  
OF SERBIA AND THE BUNDESANSTALT FÜR  
FINANZDIENSTLEISTUNGSAUFSICHT CONCERNING THEIR  
COOPERATION IN THE FIELD OF SUPERVISION OF BANKS**

1. The National Bank of Serbia (hereinafter "NBS") and the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, hereinafter „BaFin“), (both hereinafter referred to jointly as "the Authorities" and each "an Authority") express their willingness to cooperate on the basis of reciprocity as well as mutual trust and understanding and agree to base their co-operation in the field of supervision of Authorised Institutions on the principles and procedures outlined in this Memorandum of Understanding, in order to facilitate the performance of the Authorities' respective duties and to promote the adequate functioning of Authorised Institutions in Serbia and/or in Germany, according to their national legislation. Nothing in this Memorandum of Understanding shall require either of the Authorities to provide information or assistance the disclosure or provision of which is restricted or prohibited by law or to act in any manner which is restricted or prohibited by law.

2. NBS is the central bank of the Republic of Serbia and, as such, its main responsibilities are the protection of price stability and the maintenance of financial stability. NBS in carrying out its responsibilities acts as autonomous and independent institution. The supervisory function of the NBS is aimed at monitoring solvency and legal grounding of operations performed by commercial banks and insurance, leasing and voluntary pension fund management companies
3. As the central body in accordance with the law on a single financial services supervisory authority ("Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht"), the German Banking Act ("KWG") and other special laws, the BaFin is entrusted with the supervision of banks, insurance companies and investment firms in Germany. As an independent superior federal authority within the purview of the Federal Ministry of Finance, the BaFin forms a part of the direct federal administration. Exercising its sovereign functions, the BaFin closely co-operates with the Deutsche Bundesbank in carrying out the supervision of banks and investment firms. The BaFin and the Deutsche Bundesbank are hereinafter jointly referred to as "German banking supervisors".
4. For the purposes of this Memorandum of Understanding, the concepts mentioned below will have the following meaning:

"Authorised Institution(s)": In Serbia an institution authorised under the Law on the National Bank of Serbia and the Law on Banks, for the supervision of which NBS is responsible, and in Germany an institution for the supervision of which the BaFin is responsible pursuant to section 1 sub-sections 1 and 1a KWG.

"Authorised Parent Institution": A legal entity licensed in Serbia or in Germany, which has a Cross-Border Establishment located in the respective other country.



"Cross-Border Establishment(s)": A branch or a subsidiary or a representative office of an Authorised Parent Institution incorporated within the jurisdiction of one of the Authorities and operating in the jurisdiction of the other Authority.

"Branch": An organisational unit of an Authorised Parent Institution incorporated in Serbia or in Germany, which does not have a separate legal status, and operating in the respective other country.

"Subsidiary": An Authorised Institution incorporated in Serbia or in Germany, which is controlled by an Authorised Parent Institution in the respective other country.

"Home Supervisor": The Authority located in Serbia or in Germany, respectively, responsible for the supervision on a consolidated basis of an Authorised Institution.

"Host Supervisor": The Authority located in Serbia or in Germany, respectively, in which an Authorised Parent Institution is authorised to carry out banking activities through its Cross-Border Establishment.

"On-Site Inspection(s)": The official visits of inspection carried out at a Cross-Border Establishment or an Insourcer, respectively, by the Home Supervisor, through duly authorised officers or auditors and/or examiners commissioned by the Home Supervisor.

"Insourcer": An entity to which an Authorised Institution or a Cross-Border Establishment has outsourced operational areas that are essential for the conduct of the Authorised Institution's or the Cross-Border Establishment's business licensed by the respective Authority.

#### **Information regarding Authorised Institutions**

5. The Authorities intend to co-operate in the supervision of Cross-Border Establishments of Authorised Institutions. The scope of co-operation encompasses the authorisation process (both issuance and revocation) as

well as the ongoing supervision of Cross-Border Establishments. The Authorities intend upon specific request to share information in respect of Cross-Border Establishments which will enable or assist the recipient Authority in the exercise of its supervisory functions. The BaFin will pass on information received from NBS to the Deutsche Bundesbank, having regard to the domestic allocation of responsibility for the supervision of Authorised Institutions in Germany, on the basis that the Deutsche Bundesbank will preserve the confidentiality of the information and will not disclose it without the prior written consent of NBS to third parties and otherwise in accordance with the provisions of this Memorandum of Understanding. The Authority providing the information referred to in this paragraph may attach conditions to any such disclosure of information prohibiting any further disclosure of such information without the providing Authority's consent.

## **Licensing**

6. If an Authorised Institution based in one of the two jurisdictions applies to the Authority of the other jurisdiction to establish a branch, the latter intends to inform the Home Supervisor without delay. If the adequacy of home supervision is a statutory prerequisite which the Host Supervisor needs to address in the licensing procedure, it would contact the Home Supervisor to settle any question in this regard.
7. The Home Supervisor intends to inform the Host Supervisor whether the applicant is fully subject to and complies with the domestic banking regulation, and whether it is expected in the light of its administrative structure and internal control to run the Cross-Border Establishment in an orderly and proper manner. The Home Supervisor intends to disclose any piece of available information to the Host Supervisor which might give rise to doubts as to the fitness and properness of the prospective managers of the Cross-Border Establishment.



## **Co-operation concerning ownership control**

8. The Authorities intend to consult before granting authorisation to a subsidiary of an Authorised Institution authorised in the other jurisdiction or assessing any acquisition of a holding in a domestic Authorised Institution through an Authorised Institution within the jurisdiction of the other Authority.

## **Ongoing supervision; corrective action**

9. NBS and the German banking supervisors will endeavour to inform each other, in good time and to the extent reasonable, about any event which has the potential to endanger the stability of Authorised Institutions having Cross-Border Establishments in the respective other jurisdiction. The Authorities will also endeavour to notify each other of administrative penalties which they have imposed or any other action which they have taken in respect of such a Cross-Border Establishment as host supervisor or on the parent institution as home supervisor if the information in their judgement is likely to be important to the other Authority to assist that other Authority in the exercise of its functions.
10. NBS and the German banking supervisors intend to discuss with each other any significant information on Authorised Institutions having Cross-Border Establishments in the other jurisdiction which is likely to be relevant to the other Authority to assist that other Authority in the exercise of its functions. Relevant matters are in particular: concerns about the financial soundness of an Authorised Institution (failure to meet capital adequacy or other financial requirements, significant losses, rapid decline in profits or a deterioration in profitability), concerns relating to compliance or control procedures, concerns arising from supervisory visits, prudential interviews or reports from and communications with an Authorised Institution or other regulatory body (subject to obtaining any necessary consent from any such regulatory body), concerns arising from late or inaccurate prudential returns and concerns relating to supervisory arrangements in third countries (subject to obtaining any necessary consent from any relevant third country

regulatory body).

11. Representatives of NBS and the German banking supervisors will endeavour to convene ad-hoc meetings to promote the resolution of supervisory problems concerning a Cross-Border Establishment in the respective other jurisdiction, whenever either side reasonably requests on the basis that it has a material supervisory concern.
12. For institutions which are not licensed in Serbia and in Germany respectively and which are licensed or apply for a licence with one of the Authorities, NBS and the BaFin intend, as far as they are able, to discuss any significant information available to them which might be relevant to the other Authority to assist that other Authority in the exercise of its functions.

### **Financial Crime**

13. The Authorities intend to co-operate closely when they identify suspected financial crime activities in supervised Authorised Institutions. For the purposes of this Memorandum of Understanding, financial crimes include in particular: the legalisation (laundering) of illegally obtained proceeds of crime, the financing of terrorism and all violations of law on financial markets. This also includes unauthorised banking or financial services business. The Authorities will endeavour to share information on financial crime concerning the respective Authorised Institutions which carry out cross-border activities in the other jurisdiction or which could affect the other jurisdiction. They may pass on this information, with prior written consent received from the providing Authority and subject to any conditions which may be attached to that consent, for regulatory or law enforcement purposes to relevant regulatory or law enforcement authorities in their jurisdiction.

### **Crisis situations**

14. NBS and the German banking supervisors intend to inform each other without delay if they learn of an incipient crisis relating to any Authorised



Institution supervised by either which has Cross-Border Establishments in the respective other jurisdiction.

### **On-Site Inspections**

15. The Authorities agree that co-operation is particularly useful in assisting each other in carrying out On-Site Inspections of Cross-Border Establishments or Insourcers. NBS will support the BaFin or the auditors and/or examiners commissioned by it to carry out On-Site Inspections of branches and subsidiaries of German Authorised Institutions as well as Insourcers in Serbia. In return, the BaFin will support NBS to carry out On-Site Inspections of branches and subsidiaries of Serbian Authorised Institutions as well as Insourcers in Germany.

16. The Authorities will notify each other in advance of any On-Site Inspection, giving details of the names of the auditors and/or examiners, the purpose of the inspection and its expected duration. The Authorities intend to allow each other to accompany any such On-Site Inspection carried out either by the Authorities themselves or the auditors and/or examiners commissioned by the Authorities. The Authorities will keep each other informed on the results of the inspections, if of interest to the Host Supervisor, to the extent reasonable and permitted by law and in a timely manner. If the parent institution has been inspected along with its Cross-Border Establishment in the other jurisdiction, the Home Supervisor will endeavour to provide the Host Supervisor with a summary report on the findings which are relevant to the Cross-Border Establishment and which will assist the Host Supervisor in exercising its functions.

### **Professional secrecy**

17. Compliance with the obligation of professional secrecy and confidentiality by all employees who receive confidential information from the other Authority in the course of their activities is a necessary condition for a successful co-operation between the Authorities. The Authorities agree that any confidential information shared through these arrangements will be used

only for lawful supervisory purposes. The Authorities will maintain the confidentiality of all information received through these arrangements from each other and will not disclose any such information other than as necessary to carry out their supervisory responsibilities without first obtaining the prior written consent of the other Authority and then only in accordance with the conditions (if any) attached by the providing Authority. Each Authority will, if it receives any legally enforceable demand for information received from the other Authority or acquired in the course of an on-site examination in the other Authority's jurisdiction pursuant to which it is obliged by law to disclose such information (notwithstanding any other provision of this Memorandum of Understanding), promptly notify the other Authority and will co-operate in seeking to preserve so far as legally possible the confidentiality of such information. The BaFin will pass on the information received from NBS to the Deutsche Bundesbank to the extent that such information is of significance for the performance of the functions of the Deutsche Bundesbank as outlined in Section 7 KWG, on the basis that the Deutsche Bundesbank shall only use the information for lawful supervisory purposes and shall not disclose the information to any other person without the prior written consent of NBS. The BaFin shall be responsible to ensure confidentiality of information passed on to the Deutsche Bundesbank in the manner prescribed by this Article.

#### **Technical arrangements**

18. In order to enhance the quality of co-operation, representatives of NBS and the German banking supervisors will endeavour to convene periodically to discuss issues concerning Authorised Institutions which maintain Cross-Border Establishments within their respective jurisdictions. In these meetings they will also review the effectiveness of these arrangements.
19. Written requests shall be addressed to the General Manager of Banking Supervision Department in the case of NBS, and to the Executive Director International Policy/Affairs, in the case of the BaFin.



20. The Authorities will endeavour to ensure that they send each other an updated list of Cross-Border Establishment(s). They will also endeavour to advise each other upon request on any aspect of their regulatory systems and notify any major change in their domestic rules and regulations within their jurisdiction which is likely to have a significant bearing on the activities of Cross-Border Establishments and/or the confidentiality of information provided under this Memorandum of Understanding.
21. Co-operation and assistance in accordance with this Memorandum of Understanding is intended to continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to discontinue co-operation and assistance. If either Authority gives such notice, the Authorities will nevertheless endeavour to continue co-operation and assistance in accordance with this Memorandum of Understanding with respect to all requests for assistance that were made before the effective date of notification until the requesting Authority withdraws the matter for which assistance was requested.
22. In the event of termination of this Memorandum of Understanding, information obtained under this Memorandum of Understanding will continue to be treated confidentially.
23. This Memorandum of Understanding shall enter into force as of the date of the last signature and shall remain in existence until either party notifies the other in writing of its wish to revise, amend or withdraw from this Memorandum of Understanding. Thirty days' notice of any such action will be given.
24. This Memorandum of Understanding shall be modified by the Authorities' mutual consent. The modifications shall be formalised in writing specifying the date they will come into force.
25. This Memorandum of Understanding is a statement of intent and does not, and is not intended to, create any legally binding obligations. No provision of

this Memorandum of Understanding is intended to give rise to the right on the part of any person, entity or governmental authority, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this Memorandum of Understanding.

26. Without prejudice to paragraph 25 above, the Authorities acknowledge their mutual intention that provision of, or requests for, information under this Memorandum of Understanding may be denied (a) where compliance would require NBS or the BaFin to act in a manner that would violate applicable law or any agreement entered into before the date of this Memorandum of Understanding, (b) on grounds of public interest or national security or (c) when compliance with a request for provision of information would interfere with an ongoing investigation in circumstances where the prejudice to the investigation is likely to outweigh the adverse effects of denying the information.

27. Any difference derived from the interpretation or application of the provisions of this Memorandum of Understanding shall be solved by the Authorities in common agreement.

For the

National Bank of Serbia



*[Signature]*  
Dejan Čoskić, PhD

*1.6p. 7515*  
Dated : 22.7.2011.

For the

Bundesanstalt für

Finanzdienstleistungsaufsicht

Jochen Sanio

President

Dated : 1 July 2011