

**MEMORANDUM OF CO-OPERATION
ON BANKING SUPERVISION**

BETWEEN

**THE SUPERINTENDENCIA DE ENTIDADES
FINANCIERAS Y CAMBIARIAS DEL BANCO
CENTRAL DE LA REPUBLICA ARGENTINA**

AND

THE BANCA D'ITALIA

**MEMORANDUM OF CO-OPERATION ON BANKING SUPERVISION
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DEL BANCO CENTRAL DE LA REPUBLICA ARGENTINA
AND
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This Memorandum is based on the following principles:

- co-operation
- mutual trust
- reciprocity
- confidentiality
- disclosure

and aims at the following objectives:

- to promote the sound and prudent management of financial institutions operating in both countries;
- to ensure comprehensive supervision on a consolidated basis and co-operation between supervisory authorities;
- to exchange and update information on the respective banking systems;
- to exercise effective supervision.

1. REASONS FOR A MEMORANDUM OF CO-OPERATION

Since there are subsidiaries of Italian banks and banking groups which transact business in Argentina and an inverse situation would be feasible in the future both the *Superintendencia de Entidades Financieras y Cambiarias* (SEFyC) and the Banca d'Italia deem that bilateral co-operation would be convenient and beneficial to achieve the effective supervision of said institutions.

To this purpose, both authorities, within the scope of their respective legal powers and with a spirit of mutual trust and understanding, agree to develop said co-operation in the terms and conditions set forth in the present Memorandum. Co-operation shall include contacts during the authorisation period (which involves both the issuance and the withdrawal of the banking licence of any institution), as well as the supervision of the ongoing activities of national entities operating in the other country.

2. PRINCIPLES ON THE SUPERVISION OF INTERNATIONAL BANKS

Both authorities commit themselves to the principles contained in the document of the Basle Committee of Banking Supervisors dated May 1983, called "Principles for the supervision of foreign banking institutions", its subsequent revisions and the "Core Principles for Effective Supervision" (September 1997). Consequently, they agree upon the functions allocated in such documents to the supervisor of the parent institution (home supervisor) and to the supervisor of the country in which the branches or the participated entities are located (host supervisor).

In short, both authorities agree that the home supervisor shall be in charge of the control of the organisation, internal management and control, risks, capital adequacy, and, in general, any significant aspect that may affect solvency and financial stability of the group and shall have access to all the information it may require to this purpose. The host supervisor shall supervise the organisation, internal management and controls, risks, effectiveness of the control policies with respect to capital, and hence, the continuity of the entity or entities operating within its territory, guaranteeing the veracity of their financial statements and the accuracy of the information received by the home supervisor, pursuant to the regulations in force in each financial system.

Moreover, in the event that the entities operating in the host country have established branches or subsidiaries in other countries, the host supervisor must simultaneously assume the responsibility as home supervisor with respect of the corresponding subgroup, provided that the regulations of the countries where the subsidiary or branch is located permit it.

Both authorities undertake to develop close co-operation in order to achieve the aforementioned objectives. To this purpose, on and after their own decision or on request, they shall exchange the pertinent information available and shall facilitate the performance of their functions.

3. CONFIDENTIALITY OF INFORMATION

Compliance with the duty of professional secrecy by all employees receiving confidential information from the other country in the exercise of their functions is a necessary condition for successful bilateral co-operation between the Argentine and Italian authorities.

The information exchanged between the authorities may only be used for purposes of supervision and may not be furnished or divulged to third parties without the express consent of the authority supplying it.

In Argentina, there are no secrets between banks and the Banking Supervision Authority. Banking secrecy (which only covers passive operations) is defined in article 39 of Law N° 21.526 (Ley de Entidades Financieras). The SEFyC can share information protected by the banking law with other institutions, being obliged to maintain confidentiality about the data received.

In Italy professional secrecy is regulated by Article 7 of the Italian Banking Law. According to this provision while the information and figures possessed by the Banca d'Italia by virtue of its supervisory activity are covered by professional secrecy, also with respect to governmental authorities, the cases in which the law provides for investigations of criminal violations are unaffected. The Banca d'Italia in order to facilitate the performance of the respective functions shall also exchange information with the authority regulating stock exchange operations (Consob), the pension fund supervisory authority, and the supervisor of the insurance companies (ISVAP). In particular, the Banca d'Italia and the Consob may not invoke professional secrecy in their mutual relations. With respect to non-EU members' authorities, Article 7 paragraph 8, states that the Banca d'Italia may exchange information within the framework of co-operation agreements and subject to reciprocity and equivalent obligations of confidentiality.

4. GENERAL COMMITMENT OF CO-OPERATION AND INFORMATION EXCHANGE

The home supervisor is interested in identifying the companies that form part of the group, or those in which the parent company holds a significant share; likewise, it is interested in knowing of the operations within the group and any other information that may produce adjustments in the consolidated balance sheets, as well as any problem or weakness detected in the operations, internal controls, financial situation or in the public image of the companies that are engaged in activities in the host country. Therefore, provided that the information is relevant, the home supervisor shall be interested in acquiring information on the observations, requirements, sanctions imposed and, in general, any other measure taken by the host supervisor related to the companies or the directors of the groups to which they belong and in which the parent company holds investments.

Similarly, the home supervisor may be interested in the host supervisor furnishing it with any significant available information that may tend to disprove the prudent management of the group. In addition, the home supervisor may request the necessary assistance from the host supervisor, in such a way that the subsidiaries may provide their parent companies with the accounting information required for the control of risks and

their effective consolidation and, specifically, detailed information with respects to credits, investments and stock portfolio.

On the other hand, the host supervisor may be specially interested in becoming aware of the quality of the management or internal controls applied by the parent bank, as well as the problems or weaknesses of the group as a whole, or the measures taken by the home supervisor that may affect the financial standing of local institutions.

Both authorities may be interested in knowing the situation and evolution of their respective financial markets and the competitive position of the groups operating in their territories.

5. ASPECTS RELATED TO THE ACTIVITIES PERFORMED BY A GROUP

In Argentina, according to regulations in effect, supervision of banking groups is performed on a consolidated basis. To that end, and within said groups, the following classes of financial institutions are deemed consolidable whatever their nationality: banking institutions, securities corporations and agencies, holding companies or those whose main activity is that of holding shares, pension fund management companies, equity management companies, instrumental or ancillary companies, any other company carrying out activities proper to the above-mentioned institutions and, with a particular treatment, insurance companies. Said supervision on a consolidated basis is effected independently of individual supervision, which in some of the above mentioned companies, is assigned to other controlling agencies.

The Bank of Italy performs banking supervision on both an individual and a consolidated basis according to internationally accepted standards.

According to Italian law a banking group is composed either of: a) an Italian parent bank and the banking, financial and instrumental companies it controls; b) an Italian parent financial company and the banking, financial and instrumental companies it controls, provided that the group has a significant banking component as established by the Banca d'Italia in compliance with the resolutions of the Comitato Interministeriale per il Credito e il Risparmio. It is mandatory for parent undertakings to submit twice a year consolidated income and balance sheet statements, along with sundry statistical data and information. Banks, including branches and subsidiaries of foreign branches, must also submit data and information on an individual basis.

Whenever necessary and at least once a year, both authorities agree to exchange the lists of the entities, whether subject to consolidated supervision or not, that are known to be included among the institutions subject to the present Memorandum. Moreover, once a year the control bodies shall receive information

regarding the most important operations carried out within the groups, both in the country and with entities with headquarters abroad.

6. ASPECTS RELATED TO THE AUTHORISATION OF BANKING SUBSIDIARIES

The creation of branches and the acquisition of significant direct or indirect interest in an existing institution in another country are subject to the authorisation of the corresponding control entities. Said authorisation may be rejected due to causes indicated in the law, or, based on the financial situation of the credit institution or its management capacity, when it is considered that the project may have a negative effect; when effective supervision of the group on a consolidated basis cannot be ensured; or when activities undertaken by the supervised entity are not subject to effective control by the home supervisory authority.

In Argentina, as for group banking affiliates, the establishment of new financial entities or the purchase of capital stock of those existing is free, subject only to the adequacy of the capital of the new bank (at least \$15 million) or of the purchaser, and to the experience and ability of the group (both technical and moral) to take charge of the management and ownership of the institution.

The creation of a foreign entity's subsidiary or branch or the acquisition of the capital stock of an already existing domestic entity by a foreign entity is subject to the previous authorization of Banco Central de la República Argentina which requires 1) that the country where the bank requesting such authorization is located has implemented a supervisory regime on a consolidated basis to monitor liquidity and creditworthiness, thus assessing and controlling risks and financial positions on a consolidated bases, and 2) that the relevant information be available to SEFyC. In addition, the supervisory bodies of such foreign country shall be required to issue an opinion accounting for the advisability to carry out the operation requested.

The establishment of national branches abroad is subject in Argentina to the prior approval of the SEFyC and BCRA. Such authorisation is given on the basis of the institution's position and the availability of information allowing for an adequate supervision by SEFyC.

In Italy the creation by Italian banks of branches or subsidiaries in a non-EU member state or the acquisition of significant direct or indirect interests in an already existing foreign institution is subject to the authorisation of the Banca d'Italia. Banca d'Italia assesses the organisation of the bank requesting the authorisation, taking into account whether the new composition will ensure the exercise of effective consolidated supervision. According to Italian legislation (Article 61(4) of the 1993 Banking Law) the parent undertaking, in carrying out its activity of management and co-ordination, shall issue rules to the

components of the group for the implementation of the instructions issued by the Banca d'Italia in the interest of the stability of the group. Companies included within the scope of consolidated supervision shall provide the parent undertaking the reports, figures and information needed to carry out consolidated supervision. It is therefore essential that Banca d'Italia verify that the regulation in force in the country where the component of the group is located allows for the smooth exchange of such information. The Banca d'Italia may require the financial statement of the companies included within the scope of consolidated supervision to be audited.

The supervisory bodies submit the foreign banking institutions operating in their territory to the same requirements and supervision as all the other authorised banking institutions of the country.

The SEFyC and the Banca d'Italia shall freely discuss any aspect and may request the exchange of any significant information they may hold in relation to said subsidiaries.

7. ON-SITE INSPECTIONS

In Italy on-site inspections of credit institutions are carried out by the Inspectorate of the Banca d'Italia and may involve a general analysis of the undertaking or the investigation of specific sectors.

The main aims of an inspection are to verify the soundness of the bank and to check for compliance with supervisory rules and for the accuracy of prudential and statistical reports to the supervisory authorities. To this end an assessment is made of the activity of the management, the consistency and implementation of strategic plans, the situation of the institution's assets, its market position and the effects on solvency, liquidity and profitability. Inspection methods are set forth in a guide, ensuring uniformity of procedures and comparability of findings.

In Argentina the banking supervision legal and policy framework is defined according to Law 24.144 (BCRA's Charter) and Law 21.526 (Law of Financial Entities). Article 43 of BCRA's Charter states that "BCRA shall supervise the financial and foreign exchange activities by *Superintendencia de Entidades Financieras y Cambiarias...*".

On site inspections are aimed to assess the accuracy of the financial statements submitted to the Superintendencia by the financial entities. Furthermore, supervisory procedures comprise the assessment of the entity's internal controls and monitoring procedures, tests to find out if such controls are fulfilled and all detailed or analytical evidences judged necessary by the supervisor.

Upon the completion of supervisory procedures, every financial entity is rated in accordance with several components. In addition, a monitoring programme is scheduled in order to follow up the performance of each entity. Inspection procedures are set forth in a guide, ensuring uniformity of procedures and comparability of findings.

Based on the foregoing, the parties to the present Memorandum agree that bilateral co-operation is particularly useful for the purpose of mutual assistance in on-site inspections of branches and subsidiaries.

At the request of any of the parties and upon mutual consent, the SEFyC and the Banca d'Italia may include national institutions located in the other country, in their "on-site" inspection schedule. If this is the case, neither of the authorities sees any legal impediment to the possibility that the supervisory entity of the parent company may perform the on-site inspection in the host country acting as invited.

In this case, the parties to the present Memorandum agree on the following procedures:

- The home supervisor shall inform the host supervisor, through written notice forwarded in advance, of the intention to carry out an examination of a branch or a subsidiary located in the territory of the host supervisor.
- The host supervisor shall provide the home supervisor with the required assistance.
- The host supervisor may suggest that the visiting supervisor hold a meeting prior to the inspection. The host supervisor shall inform the visiting supervisor regarding any required proceeding and/or procedure.
- The home supervisor shall inform the host supervisor of the conclusion of the inspection of a branch or subsidiary located in the territory of the host supervisor and shall forward a summarised version of the inspection report.
- The host supervisor shall inform the home supervisor of the commencement and conclusion of the inspection of a branch or subsidiary located in its territory and shall furnish information on the outcome of the executed control.

8. ASPECTS RELATED TO OTHER FINANCIAL SUBSIDIARIES SUPERVISED BY OTHER AUTHORITIES

The home supervisor shall be interested in being informed on any other aspect that could be of interest to it for the supervision of the banking groups. Also, it shall be interested in becoming familiar with the relevant amendments in the local legal provisions affecting such institutions.

At the request of the home supervisor, the host supervisor may agree to act as intermediary between the home supervisor and any other supervisory authority that may operate in the host country.

9. ASPECTS RELATED TO NON-FINANCIAL INSTITUTIONS

In both countries equity interests of banking institutions in non-financial companies are subject to certain limitations.

In Argentina, the general framework for financial entities investments is set by Law 21526 (Law of Financial Entities) that in its article 28 states that financial entities may not run, on their own account, commercial, industrial or agricultural enterprises, or otherwise, unless they have an express authorization from the Central Bank of the Argentine Republic, which shall give such authorization on a general basis and shall determine limits and conditions thereto which may assure that the institution's soundness and equity shall not be affected.

Accordingly, Central Bank regulation provides that a financial entity may hold up to a 12,5% share in companies that develop activities other than financial intermediation (or a lesser ratio if such share implies holding a controlling interest in such company).

In addition to those individual limits, regulation provides for a global limit that ranges from 15% to 50% of an entity's capital stock, depending on the fact that such shares are listed on the stock exchange or not.

Finally, an interest above 5% in other financial entities and up to 12,5% in complementary activities shall be authorized by the SEFyC.

In Italy, the Bank of Italy, in compliance with Article 53 of the 1993 Banking Law, issued general regulations concerning banks' and banking groups' permissible holdings in both financial and non-financial entities. Article 19 of the Law regulates the Bank of Italy's authorisation powers with respect to holdings in the capital of banks and explicitly states that "persons who, through subsidiary companies or otherwise, engage in significant business activity in sectors other than banking and finance may not be authorized to acquire shares or capital parts which, when added to those already held, would result in a holding exceeding 15 per cent of the voting capital of a bank or in control of the bank.

10. CONTACTS OR MEETINGS OF REPRESENTATIVES OF THE TWO AUTHORITIES

The persons in charge of supervisory functions in each country may require recommendations and clarification from the other party at any time, as well as the holding of the meetings deemed necessary.

11. GENERAL COMMITMENT TO EXCHANGE INFORMATION ON BANKING SYSTEMS

Both authorities commit to exchange and to keep updated all relevant information on their respective banking systems, on the applicable legal provisions and on the local supervisory policies.

12. RECIPROCITY AND UPDATING OF THE DOCUMENT

Both authorities agree that the content of this Memorandum shall be applied reciprocally.

It is hereby agreed that the Memorandum shall be revised for its updating whenever necessary or at the request of either of the parties.

In addition, since Article 25 EC Directive 2000/12/EC entitles the European Commission to negotiate agreements with one or more third countries regarding the means of exercising supervision on a consolidated basis over:

- credit institutions the parent undertakings of which have their head offices situated in a third country, and
- credit institutions situated in third countries the parent undertakings of which, whether credit institutions or financial holding companies, have their head offices in the Community,

this Memorandum might be revised in the event that Argentina concludes such an agreement.

13. VALIDITY AND TERMINATION OF THE MEMORANDUM

This Memorandum shall be in full force and effect as from the date of its signing. Either of the subscribing parties may request the termination of this Memorandum and must notify the other party to this effect within a period of sixty (60) calendar days. If within said term no communication is forwarded the Agreement shall be understood as terminated.

Signed in two copies.

For the Superintendencia de entidades

Guillermo Lesniewier, Superintendent

For the Banca d'Italia:

Antonio Fazio, Governor

31 dicembre 2001

2001