

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE BANK OF ALBANIA

AND

THE BANKING AND PAYMENTS AUTHORITY OF KOSOVO

**CONCERNING THEIR CO-OPERATION IN THE FIELD OF SUPERVISION OF
BANKS**

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The Bank of Albania, (hereinafter: BoA), represented by Mr. Ardian Fullani, Governor, and the Banking and Payments authority of Kosovo, (hereinafter: BPK), represented by Mr. Michel Svetchine, Managing Director, both hereinafter referred as “the Authorities,” reminiscent of United Nations Security Council Resolution 1244 (1999) of 10 June 1999, whereby the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations, authorized the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo, known as the United Nations Interim Administration Mission in Kosovo (UNMIK), in order to provide an interim administration in Kosovo with the mandate as described in the resolution,

and cognizant of the interim character of BPK as a part of an interim administration in Kosovo,

express their willingness to co-operate on the basis of mutual trust and understanding and agree to base their co-operation in the field of supervision of banks on the principles and procedures outlined in this memorandum.

The general frameworks of this Memorandum of Understanding are the Core Principles for Effective Banking Supervision issued by the Basle Committee on Banking Supervision in September 1997 (hereinafter: Core Principles).

The co-operation of the Authorities under this Memorandum shall be accomplished in accordance with the principle of reciprocity.

The purpose of this Memorandum is to establish a co-operation between the Authorities in order to facilitate the effectiveness of the supervision and to provide the supervision of banks on a consolidated basis.

Competent authorities

1. The BoA is responsible for banking supervision under Law No. 8269 dated 23.12.1997 “on Bank of Albania” and Law No. 8365 dated 02.07.1998 “On Banks of the Republic of Albania.”

The BPK acts as the banking supervision authority under UNMIK Regulation No. 1999/20, as amended on the Banking and Payments Authority of Kosovo, and UNMIK Regulation No. 1999/21 on Bank Licensing, Supervision and Regulation.

Definitions

2. For the purposes of this Memorandum of Understanding, the following expressions shall have the following meaning:

Cross – Border Establishment: “A Branch in one jurisdiction that is established by a head office of a bank that is incorporated and licensed in the other jurisdiction, or a Subsidiary incorporated and licensed in one jurisdiction that is directly or indirectly controlled by a parent bank that is incorporated and licensed in the other jurisdiction.”

Branch:	“The organisational unit licensed in one jurisdiction of a bank that is incorporated and licensed in the other jurisdiction.”
Subsidiary:	“ A bank incorporated and licensed in one jurisdiction that is directly or indirectly controlled by a parent bank incorporated and licensed in the other jurisdiction.”
Home Supervisor:	“The authority supervising the head bank in the case of a Branch, or supervising the parent bank in the case of a Subsidiary.”
Host Supervisor:	“The authority supervising a Branch or a Subsidiary within its jurisdiction.”

Professional Secrecy

3. Compliance with the obligations of professional secrecy by all employees and officials who receive information from the respective other jurisdiction in the course of their activities is a necessary condition for successful co-operation between the Authorities. The Authorities will ensure full compliance with the essential criteria of Core Principle 1(6).

BoA is subject to the fulfilment of the professional secrecy requirements to the extent specified in Chapter 58 of the Law No. 8269 “on Bank of Albania.” And chapter 23 on the Law No. 8365 “on Banks in the Republic of Albania”.

BPK is subject of the fulfilment of the professional secrecy requirements to the extent specified in Section 34 of UNMIK Regulation 1999/20, as amended.

The Authorities will not disclose any confidential information to third parties without the prior written consent of the authority that has provided this confidential information.

If the disclosure of confidential information to a home authority (e.g. Courts, Tax Administration etc.) is required by Albanian law or law applicable in Kosovo, the Authorities will promptly notify each other.

Exchange of information

4. The Authorities endorse a broad principle of exchange of information between each other to support and facilitate their respective supervisory tasks. The Authorities underline the willingness to share the information on events concerning Cross – Border Establishments and also their parent banks regulated by the Albanian and Kosovo Banking Supervision.

In broad terms this means that there will be contact, in writing or orally, whenever the Home or Host Supervisor considers this useful or necessary on the basis of relevant facts

or developments for his own or each other's supervisory purposes. In particular, the Host Supervisor will alert the Home Supervisor promptly of any event concerning the Branch or Subsidiary which might jeopardise the stability of the bank as a whole. They will inform each other of administrative penalties imposed or other actions taken on a Branch or Subsidiary or a bank as a whole, in so far as they are aware and the penalty or other actions can be deemed to be of a material importance.

In addition, there will be communications between Authorities regarding any substantial changes in the respective domestic supervisory regulations and policies.

The communication and the exchange of information shall be carried out by the persons authorised from both Authorities.

Licensing, ownership control and management

5. If a bank incorporated in one of the two jurisdictions applies to the Authority of the other jurisdiction to establish a Branch or a Subsidiary, the latter shall inform the Home Supervisor without delay. If the adequacy of the home supervision is a statutory prerequisite which the Host Supervisor needs to address in the licensing procedure, it would contact the home – jurisdiction authority to settle any question in this regard.

The Home Supervisor informs the Host Supervisor of the amount of funds and the solvency ratio of the parent bank, whether the parent bank is authorised to provide banking and other financial services, whether it 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 discloses any piece of available information to the Host Supervisor, which might give rise to doubts as to the fit – and proper-ness of the prospective managers of the Cross – Border Establishment.

The Authorities shall consult or ask for an evidence of a prior approval (if granting of such approval is stipulated with the regulation of the Authorities), before granting authorisation to a Subsidiary of a bank authorised in the other jurisdiction or assessing any acquisition of a holding in a domestic bank through a bank within the jurisdiction of the other Authority.

The Home Supervisor shall provide the Host Supervisor (upon a written request and to the extent reasonable) with information about the shareholder structure, including but not limited to shareholders with a significant (qualifying) holding in a parent /head bank of a Cross-Border Establishment incorporated in the jurisdiction of the Host Supervisor.

The Host Supervisor shall provide the Home Supervisor (upon a written request and to the extent reasonable) with information about the shareholder structure, including but not limited to shareholders with a significant (qualifying) holding in a Subsidiary of a parent bank authorised in the jurisdiction of the Home Supervisor.

Especially, the information from this section shall include the substantial changes in the shareholder structure in a respective bank, indicating that another entity or group of related (connected) entities have taken control of the bank.

For the purpose of this section a significant (qualifying) holding shall mean a direct or indirect holding of 10% or more of the capital or voting rights or which it makes possible to exercise a significant influence over the management of the bank in which a holding subsists.

The Authorities of the respective jurisdictions shall provide each other with information (upon written request and to the extent reasonable) about the individuals or enterprises which have or seek control of one or more banks incorporated in the other jurisdiction.

On-site examinations

6. Recognising the importance of consolidated supervision, the Authorities agree that their co-operation is particularly useful in assisting each other in carrying out on-site examinations of Cross – Border Establishments.

In the course of the preparation of the examination plan, the Host Supervisor will inform the Home Supervisor about the scheduled period for the on-site examination of the Subsidiary or the Branch.

The Host Supervisor will allow the Home Supervisor to carry out examinations of Branches and Subsidiaries in the host jurisdiction. The Host Supervisor will allow on-site examination, upon advanced notification of the institution subject to examination, purpose of the examination, its expected duration and the persons performing it.

The Host Supervisor has the right to have representatives accompany any such on-site examinations. As agreed, the Host Supervisor will be kept informed on the results of such on-site examination to a reasonable extent and in a timely manner.

Laws and regulations

7. The Authorities advise each other upon request on any aspect of their regulatory system and notify each other of any major change in their rules and regulations, in particular about those changes which have significant bearing on the activities of Cross – Border Establishments, on the enforcement of laws and regulations that concern the banking sector, information about banking sector developments in Albania and Kosovo. This includes the exchange of information and - if needed – consultations on the deposit guarantee scheme.

Information will be exchanged between the Authorities in writing or orally, without request or upon request, as well as during consultation sessions between the Authorities' management and other designated staff.

Ongoing supervision and corrective action

8. The Authorities inform each other, in proper time and to the reasonable extent, about any event which has the potential to endanger the stability of bank having Cross – Border Establishments in the respective other jurisdiction. That is in particular:
- incipient crisis, any serious violation of the laws and regulations of prudential banking, a decline in capital adequacy to under the minimal limit set by Authorities on solo and consolidated basis, carrying out of business in a way that impairs the interests of the depositors of the bank or threatens the safety and stability of the banking system, or other information of serious nature;

They also notify each other of administrative penalties which they have imposed or any other action which they have taken on Cross – Border Establishment as Host Supervisor, if based on their judgement, the information is possibly important to the Authorities, in particular:

- limiting and cancelling some activities stated in the license;
- requesting changes in the Management Board (executive body) and Supervisory Board (Management Board) of the bank;
- establishment of appropriate amounts of provisions, reserves and extraordinary write-off items;
- lowering the initial capital of a bank;
- implementing forced administration;
- revoking license;
- and other supervisory measures of a material importance.

The notification between the Authorities will be in writing, without request and without undue delay. The Authorities discuss between each other any significant information on banks having Cross – Border Establishment in Albania and Kosovo. Representatives of the Authorities convene ad-hoc meetings to promote the resolution of supervisory problems concerning a Cross – Border Establishment in Albania or in Kosovo, whenever one party deems necessary.

Miscellaneous

Nothing in or relating to this Memorandum shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNMIK.

The Authorities will use their best efforts to settle amicably any dispute arising out of this Memorandum.

This Memorandum comes into force and effect and becomes binding upon the signing of both parties.

The Authorities shall continue to honour the terms of the Memorandum unless one of the Parties requests its termination. This Memorandum will then stay in effect until the expiration of 30 days after either Authority gives written notice to its counterpart indicating its intention to terminate this Memorandum. However, the Authorities shall honour the last and existing request for assistance made prior to such notification if possible under the conditions set forth under this Memorandum.

Both contracting parties agree that this Memorandum shall be changed or amended only upon written consent of both sides.

After the signing of this Memorandum, within 10 days, the Authorities shall exchange lists of authorised personnel with full contact details. The list of authorised personnel will be updated on a regular basis or if the list is changed.

After the signing of this Memorandum, the Authorities will exchange lists of licensed banks in their jurisdictions. These lists of licensed banks will be updated on a regular basis or if the list is changed.

The Authorities agree that there should be regular meetings to discuss various questions relating to prudential supervision of banks established in both jurisdictions and on developments of their regulatory and supervising systems on annual basis.

Done on exchange of letters in two copies in the English language, both copies being equally authentic.

SIGNED at Pristina, this 6th day of July 2005.

For and on behalf of the Bank of Albania

For and on behalf of the Banking and
Payments Authority of Kosovo

Ardian Fullani

Governor

Ajri Begu

Chairman of the Board

Michel Svetchine

Managing Director