

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

BUNDESANSTALT FÜR FINANZDIENSTLEISTUNGSAUFSICHT OF GERMANY

AND THE

SUPERINTENDENCIA DEL SISTEMA FINANCIERO DE EL SALVADOR

CONCERNING MUTUAL COOPERATION

1. The Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) of Germany and the Superintendencia del Sistema Financiero de El Salvador (“SSF”) have reached the following understanding in order to establish an arrangement for their cooperation and the sharing of information to facilitate the performance of their respective duties and to promote the safe and sound functioning of financial institutions with cross-border establishments in their respective jurisdictions. This understanding demonstrates the commitment of both supervisors to the principles of effective consolidated supervision and cooperation between banking supervisors as laid down in the Basel Committee's Concordat and Core Principles for Effective Banking Supervision.

2. The BaFin and the SSF (collectively, “the Supervisory Authorities”) express, through this understanding, their willingness to cooperate with each other on the basis of mutual trust and understanding in the supervision of cross-border establishments within their respective jurisdictions (Annex B). A cross-border establishment is defined as a branch, a subsidiary or any other entity supervised in and by the host jurisdiction which gives rise to the need for consolidated supervision by the home supervisor.

The Supervisory Authorities

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, according to Section 7 KWG the BaFin closely co-operates with the Deutsche Bundesbank in carrying out Banking

Supervision. In this context, Deutsche Bundesbank is entrusted – inter alia – with the ongoing monitoring of banks and investment firms. 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 the SSF to the Deutsche Bundesbank on a regular basis, 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 the SSF 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.

4. The SSF, according to the Ley Orgánica de la Superintendencia del Sistema Financiero (the SSF Law) and other Salvadoran financial laws, is responsible for regulating and supervising financial conglomerates, banks, cooperative banks and savings and loans institutions, exchange houses, governmental credit institutions, insurance companies and insurance intermediaries.

Scope and General Principles

5. The provisions of this understanding are not intended to create legally binding obligations or supersede domestic laws.
6. The Supervisory Authorities recognise the importance and desirability of mutual assistance and exchange of information. Information would be shared to the extent reasonable and subject to any relevant statutory provisions, including those restricting disclosure. In addition, the provision of or request for information under this understanding may be denied on the grounds of national security or when disclosure would interfere with an ongoing investigation.

Sharing of Information

7. The Supervisory Authorities recognise that information should be shared in order to facilitate effective consolidated supervision of financial institutions operating across their national borders. Information sharing includes contact during the authorisation and licensing process, in the supervision of the on-going activities of such entities and in the handling of problem institutions.

8. In connection with the authorisation process, and in accordance with the Basel Core Principles:

- (a) the host supervisor will notify the home supervisor, without delay, of applications for approval to establish offices or make acquisitions of supervised entities in the host jurisdiction;

- (b) upon request, the home supervisor will inform the host supervisor whether the applicant bank is in substantial compliance with banking laws and regulations and whether the bank may be expected, given its administrative structure and internal controls, to manage the cross-border establishment in an orderly manner. The home supervisor will also, upon request, assist the host supervisor with verifying or supplementing any information submitted by the applicant bank;
- (c) the home supervisor will inform the host supervisor about the nature of its regulatory system and the extent to which it will conduct consolidated supervision over the applicant bank. Similarly, the host supervisor will inform the home supervisor about the nature of its regulatory system and the extent to which it will supervise the cross-border establishment of the applicant bank; and
- (d) to the extent permitted by law, the home and host supervisors will share information on the fitness and properness of prospective directors, managers and relevant shareholders of a cross-border establishment.

9. In connection with the ongoing supervision of their cross-border establishments, the Supervisory Authorities intend to:

- (a) provide relevant information to their counterpart regarding material developments such as financial difficulties of a cross-border establishment or material supervisory concerns in respect of the operations of a cross-border establishment;
- (b) respond to requests for information on their respective national regulatory systems and inform each other about major changes, in particular those which have a significant bearing on the activities of cross-border establishments;
- (c) inform their counterpart of material administrative penalties imposed, or other formal enforcement action taken, against a cross-border establishment. Prior notification shall be made, as far as practicable and subject to applicable laws;
- (d) inform their counterpart, promptly and to the extent possible, about any event that may endanger the stability of the cross border establishment; and
- (e) facilitate the transmission of any other relevant information that might be required to assist with the supervisory process.

10. Requests for information will be made in writing by designated employees of the Supervisory Authority and will be addressed to the requested Supervisory Authority's contact persons (Annex A). However, where the Supervisory Authorities perceive a need for expedited action, requests may be initiated in any form but should be confirmed subsequently in writing.

On-site Inspections

11. The Supervisory Authorities agree that co-operation is particularly useful in assisting each other in carrying out On-site Inspections of Cross-Border Establishments. The SSF 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 in El Salvador. In return, the BaFin will support the SSF to carry out On-Site Inspections of branches and subsidiaries of Authorised Institutions from El Salvador in Germany.

12. The Supervisory Authorities will notify each other 30 days in advance of any On-site Inspection, giving details of the names of the auditors and/or examiners, the purpose and scope of the inspection and its expected duration. The Host Authority may, at its discretion, accompany the Inspecting Authority to, and assist the Inspecting Authority with, any On-site Inspections. The Supervisory 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.

Illicit Activities

13. The Supervisory Authorities intend to co-operate closely when they identify suspected as well as 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 Supervisory 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.

Protection of Information

14. The Supervisory Authorities recognize that mutual trust can only be achieved if exchanges of information can flow with confidence in both directions. Both Supervisory Authorities agree to take all possible steps to preserve the confidentiality of the information received. In this regard, employees of both supervisory authorities are bound to hold confidential all information obtained in the course of their duties. Any confidential information received from the other supervisor will be used

exclusively for lawful supervisory purposes. The Authorities acknowledge that confidential information, including information they receive from each other, may be passed to related government agencies set out in Annex C to this document, and confirm that in their respective countries these agencies are required by legislation to maintain the confidentiality of such information.

15. A supervisor in one jurisdiction that has received confidential information from a supervisor in another jurisdiction may subsequently receive a request for that information from a third party (other than those listed in Annex C), including a third party supervisory authority, who has a legitimate common interest in the matter. Prior to passing information to the third party, the supervisor will consult with and seek agreement from the supervisor that originated the information, who may attach conditions to the release of information, including that the third party recipient be bound to hold the information confidential.

16. In the event that a supervisor is legally compelled to disclose to a third party (other than those listed in Annex C), including a third party supervisory authority, information that has been provided in accordance with this understanding, this supervisor will promptly notify the supervisor that originated the information, indicating what information it is compelled to release and the circumstances surrounding its release. If so required by the originating supervisor, the supervisor will use its best endeavours to preserve the confidentiality of the information to the extent permitted by law. The Supervisory Authorities will inform each other of the circumstances in which they may be subject to legal compulsion to release information obtained.

Ongoing Coordination

17. The Supervisory Authorities together with Deutsche Bundesbank will conduct meetings as often as appropriate to discuss issues concerning banks and holding companies that maintain cross-border establishments in the respective jurisdictions, and to review the effectiveness of cooperation arrangements.

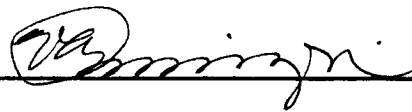
Terms and Modifications

18. This understanding shall enter into force as of the later of the two dates written below and shall continue indefinitely subject to modification by the mutual consent of the Supervisory Authorities or termination by either party with 30 days advance notice to the other party. After termination, the confidentiality provisions shall continue to apply to any information provided under this understanding prior to termination.

19. The three annexes to this document will be reviewed at least annually and reconfirmed or amended as necessary to ensure that the information therein remains current.

On behalf of:

The Superintendencia del Sistema Financiero de El Salvador

By 

Dated: 21 marzo - 2011

Víctor Antonio Ramírez Najarro, Superintendent

The Bundesanstalt für Finanzdienstleistungsaufsicht

By 

Dated: 3 February 2011

Jochen Sanio, President

Annexes

- A. Contact Persons
- B. Cross-border Establishments
- C. Related Government Agencies Receiving Confidential Information

Annex A

BaFin/SSF MoU

Contact Persons

(27 January 2011)

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BaFin/SSF MoU

Cross-Border Establishments (CBEs)¹

(27 January 2011)

German CBEs Supervised in El Salvador by SSF

- Procredit S.A.

El Salvador CBEs Supervised in Germany by BaFin

- None

¹ Cross-border establishment means a branch, a subsidiary or any other entity supervised in and by the host jurisdiction which gives rise to the need for consolidated supervision by the home supervisor.

Annex C

BaFin/SSF MoU

Related Government Agencies Receiving Confidential Information

(27 January 2011)

The Authorities acknowledge that confidential information, including information they receive from each other, may be passed to related government agencies or persons set out below.

Bundesanstalt für Finanzdienstleistungsaufsicht

- Public prosecutors' offices or courts having jurisdiction in criminal cases and administrative fine cases
- Agencies dealing with an institution's liquidation or the initiation of insolvency proceedings over its assets
- Persons entrusted with the statutory auditing of the accounts of institutions or financial enterprises and to agencies which supervise such persons
- a deposit guarantee scheme or an investor compensation scheme
- stock markets or financial futures exchanges

Superintendencia del Sistema Financiero

- Banco Central de Reserva de El Salvador (the Central Bank)
- Instituto de Garantía de Depósitos (the Deposit Guarantee Institute)
- Fiscalía General de la República (Attorney General's Office)
- Superintendencia de Valores (Stock Market Superintendence)
- Superintendencia de Pensiones (Pension Funds Superintendence)
- Tribunales judiciales (judicial courts)