

## MEMORANDUM OF UNDERSTANDING

### BETWEEN THE

### OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS CANADA

### AND THE

### SUPERINTENDENCIA FINANCIERA DE COLOMBIA

### CONCERNING MUTUAL COOPERATION AND THE EXCHANGE OF INFORMATION

1. The Office of the Superintendent of Financial Institutions Canada (OSFI) and the Superintendencia Financiera de Colombia (SFC) (collectively, the Authorities) have reached the following understanding in order to establish an arrangement for 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 countries.
2. The 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. A cross-border establishment is defined as a branch, a subsidiary or any other financial institution supervised by one Authority (the host Authority), which gives rise to the need for consolidated or group-wide supervision by the other Authority (the home Authority).

#### The Authorities

3. The OSFI was established in July 1987 by the Office of the Superintendent of Financial Institutions Act (OSFI Act). Under this Act, the OSFI is responsible for regulating and supervising all federally chartered, licensed or registered banks, insurance, trust and loan companies, cooperative credit associations and fraternal benefit societies in Canada. The Superintendent reports to the Minister of Finance.
4. The SFC is an independent technical agency linked to the Ministry of Finance, according to article 11.2.1.1.1 of the Decree 2555 of 2010, and is responsible for the supervision and control of the securities markets, and of the entities belonging to the banking, insurance, pension funds, securities intermediaries, trust funds and collective investment schemes.

## Scope and General Principles

5. The provisions of this Memorandum of Understanding are not intended to create legally binding obligations or supersede domestic laws.
6. The Authorities will, within the framework of this Memorandum of Understanding, provide each other with the fullest assistance possible to promote the safe and sound functioning of financial institutions.
7. The 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. When a request for assistance is denied, or assistance is not available under domestic law, the requested Authority will provide the reasons for not granting the assistance.
8. Requests for assistance will be made in writing by designated employees of the Authority and will be addressed to the requested Authority's contact persons. However, where the Authorities perceive a need for expedited action, requests may be initiated in any form but should be confirmed subsequently in writing.

## Sharing of information

9. 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.
10. In connection with the authorisation process:
  - (a) The host Authority should notify the home Authority, without delay, of applications for approval to establish offices, subsidiaries or make acquisitions in the host jurisdiction;
  - (b) Upon request, the home Authority should inform the host Authority whether the applicant financial entity is in substantial compliance with applicable laws and regulations and whether it may be expected, given its administrative structure and internal controls, to manage the cross-border establishment in an orderly manner. The home Authority should also, upon request, assist the host Authority with verifying or supplementing any information submitted by the applicant;
  - (c) Upon request, the home Authority should inform the host Authority about the nature of its regulatory system and the extent to which it will conduct consolidated or group-wide supervision over the applicant financial entity. Similarly, the host Authority should inform the home Authority about the nature of its regulatory system and the extent to which it will supervise the cross-border establishment of the applicant institution; and
  - (d) To the extent permitted by law, the home and host Authorities should share information on the fitness and properness of prospective directors and managers of a cross-border establishment.

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

- (a) Provide relevant information to their counterpart regarding material developments or 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 will be made, as far as practicable and subject to applicable laws; and
- (d) Facilitate the transmission of any other relevant information that might be required to assist with the supervisory process.

### **On-site inspections**

12. The Authorities recognise that cooperation is particularly useful in assisting each other in carrying out on-site inspections<sup>1</sup> of cross-border establishments in the host country. The home Authority should undertake to notify the host Authority of plans to examine a cross-border establishment or to appoint a third party to conduct an examination on its behalf, and to indicate the purposes and scope of the visit.

13. The Authorities will establish the basis and terms upon which such examinations or inspections shall be conducted. The host Authority may accompany the home Authority during an examination or inspection of the cross-border establishment. Following the inspection, an exchange of views should take place between the examination team and the host Authority.

### **Protection of information**

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

15. An Authority that has received confidential information from the other Authority may subsequently receive a request (not legally enforceable) for that information from a third party, including a third party supervisory authority, who has a legitimate common interest in the matter. Prior to passing information to the third party, the Authority will consult with and obtain consent

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<sup>1</sup> The words "inspection" and "examination" are used here interchangeably.



from the Authority 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 an Authority is legally compelled to disclose to a third party, including a third party supervisory authority, information that has been provided in accordance with this understanding, this Authority will promptly notify the Authority that originated the information, indicating what information it is compelled to release and the circumstances surrounding its release. If so required by the originating Authority, the Authority will use its best endeavours to preserve the confidentiality of the information to the extent permitted by law. The Authorities will inform one another of the circumstances in which they may be subject to legal compulsion to release information obtained.

17. Notwithstanding Section 16, the Authorities acknowledge that confidential information, including information they receive from each other, may be required by legislation to be passed to related government agencies set out in Annex A to this document, and confirm that in their respective jurisdictions these agencies are required by legislation to maintain the confidentiality of such information.

### **Financial Crime**

18. The Authorities intend to co-operate closely when they identify suspected financial crime activities in financial entities and financial transactions supervised. For the purposes of this understanding, financial crimes are in particular: money laundering, unauthorised banking, investment or insurance business and all other violations of law on financial markets.

### **Ongoing Coordination**

19. The Authorities intend to promote their cooperation through visits for information purposes. In addition, the Authorities intend to pursue areas where the training of staff at either agency would benefit from input and support by the other agency in order to reinforce sound banking and insurance supervisory practices in both countries.

20. The Authorities will conduct meetings as often as appropriate to discuss issues concerning financial entities that maintain cross-border establishments in the respective countries, and to review the effectiveness of cooperation arrangements.

### **Modifications and Term**

21. This understanding will continue indefinitely subject to modification by the mutual consent of the Authorities or termination by either party with 30 days advance notice in writing. After termination, the confidentiality provisions will continue to apply to any information provided under this understanding prior to termination.

22. Annexes A, B and C will be reviewed at least annually and reconfirmed or amended as necessary to ensure that the information therein remains current.



Superintendencia  
Financiera  
de Colombia



On behalf of:

**The Superintendencia Financiera de Colombia**

By:  Dated: 10 Oct. 2017.

**Jorge Castaño Gutiérrez, Financial Superintendent of Colombia**

**The Office of the Superintendent of Financial Institutions Canada**

By:  Dated: Nov 01, 2017

**Carolyn Rogers, Assistant Superintendent, Regulation Sector**

#### Annexes

- A – Related Government Agencies
- B – Contact Persons
- C – Cross-Border Establishments
- D - Supervision Protocol

## Annex A

### Related Government Agencies

The Authorities acknowledge that confidential information, including information they receive from each other, may be required by legislation to be passed to related government agencies or persons set out below, and that these agencies and persons are required by legislation to maintain the confidentiality of such information. Confidential information passed to those listed below are exempted from the notification provisions of Section [15] of the MoU.

#### Office of the Superintendent of Financial Institutions Canada<sup>2</sup>

- Commissioner of the Financial Consumer Agency of Canada
- Governor of the Bank of Canada
- Chairperson of the Canada Deposit Insurance Corporation
- Deputy Minister of Finance.

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<sup>2</sup> All are members of the Financial Institutions Supervisory Committee (FISC), a statutory body authorized under the OSFI Act chaired by the Superintendent of Financial Institutions.





## ANNEX B

### Contact Persons

#### SUPERINTENDENCIA FINANCIERA DE COLOMBIA

Contact: **Jorge Castaño Gutiérrez**  
Financial Superintendent of Colombia

Phone: (57 1) 5940200 ext. 1501-1502  
Fax: (57 1) 3536304  
Email: [jocastano@superfinanciera.gov.co](mailto:jocastano@superfinanciera.gov.co)

Alternate contact: **Ingrid Juliana Lagos**  
Director of the Research and Development Office

Phone: (57 1) 5940200 ext. 1520  
Fax: (57 1) 3536304  
Email: [ijlagos@superfinanciera.gov.co](mailto:ijlagos@superfinanciera.gov.co)

#### OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS CANADA

Contact: **Judy Cameron**  
Senior Director, Legislation and Approvals Division  
Phone: 613 990-7337  
Fax: 613 990-7394  
Email: [judy.cameron@osfi-bsif.gc.ca](mailto:judy.cameron@osfi-bsif.gc.ca)

Alternate contact: **James Hubbs**  
Assistant Superintendent, Deposit-Taking Supervision Sector  
Phone: 416.973-2598  
Fax: 416 954-3167  
Email: [jamey.hubbs@osfi-bsif.gc.ca](mailto:jamey.hubbs@osfi-bsif.gc.ca)

## ANNEX C

### Cross-Border Establishments

1. Scotiabank: Banco Colpatría Multibanca Colpatría S.A. (Superintendencia Financiera de Colombia acting as host supervisor)

## ANNEX D

### Supervision Protocol

The Authorities to this Memorandum of Understanding agree to the present Supervision Protocol as follows:

1. The Authorities will provide each other with the fullest assistance permissible by their respective laws and regulations to secure compliance with the respective laws and regulations of the Authorities.
  - 1.1. The assistance includes, without limitation:
    - (a) Providing information and documents held in the files of the requested authority regarding the matters set forth in the Request for Assistance; and
    - (b) Obtaining information and documents (or any other proof to the extent that is feasible to the respective Authority) regarding the matters set forth in the Request for Assistance.
  - 1.2. Requests for Assistance:
    - (a) Requests for Assistance will be made in writing and will be addressed to the requested Authority's contact persons listed in Annex B of the present Memorandum of Understanding.
    - (b) Requests for Assistance will include, to the extent feasible:
      - i. A description of the facts and reasons that support the request;
      - ii. The purpose for which the assistance is sought;
      - iii. A description of the assistance sought by the requesting Authority and why the information sought will be of assistance;
      - iv. Any information known to, or in the possession of the requesting Authority that might assist the requested Authority in identifying either the persons believed to possess the information or documents sought or the places where such information may be obtained;
      - v. An indication of any special precautions that should be taken in collecting the information due to investigatory considerations, including the sensitivity of the information;
      - vi. Reasonable time in which the requesting Authority is expecting the information delivery by the requested Authority; and
      - vii. Any other relevant information.

1.3. Execution of Requests for Assistance:

- (a) Information and documents held in the files of the requested Authority will be provided to the requesting Authority upon request, if said furnishing of information is feasible under the laws and regulation of the requested Authority.
- (b) Upon request, the requested Authority will require the production of documents from any person designated by the requesting Authority, or any other person who may possess the requested information or documents.
- (c) Upon request, the requested Authority will obtain other information relevant to the request.
- (d) Upon request, the requested Authority will seek responses to questions and/or a statement (or where permissible, testimony under oath) from any person involved, directly or indirectly, in the activities that are the subject matter of the Request for Assistance or who is in possession of information that may assist in the execution of the request.
- (e) Unless otherwise arranged by the Authorities, information and documents requested under this Supervision Protocol will be gathered in accordance with the procedures applicable in the jurisdiction of the requested Authority.

2. Regarding on-site inspections:

- (a) Before deciding if an on-site inspection is required, the home Authority should assess any information, report or examination made available by the host Authority.
- (b) Before the execution of the on-site inspection, the Authorities may meet in order to set the purposes and scope of the visit.
- (c) Members of the home Authority or its deputies will abide to confidentiality laws and regulation in the jurisdiction where the on-site inspection will take place.
- (d) The home Authority shall notify the host Authority, at least with thirty (30) days in advance, their intention to assess or inspect a cross-border establishment, and will indicate the purpose and the scope of the inspection, as well as the information required to conduct it.
- (e) Authorities will share the findings of the on-site inspection in the time agreed by both Authorities.