

**MEMORANDUM**  
**OF**  
**UNDERSTANDING**

Between

**New York State Insurance Department  
(NYSID)**

And

**Superintendencia del Sistema Financiero de El Salvador  
(SSF)**

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## **Memorandum of Understanding Concerning Cooperation, Coordination, Consultation and Exchange of Information Related to Persons or Entities Engaged in the Business of Insurance**

### **Overview**

In light of the growing globalization of insurance markets, and pursuant to Section 110 of New York Insurance Law and Articles 6 and 10 of Ley de Sociedades de Seguros (Insurance Laws) of El Salvador, the New York State Insurance Department (“NYSID”) and the Superintendencia del Sistema Financiero de El Salvador (“SSF”) (collectively, the “Authorities”) hereby enter into this Memorandum of Understanding (“MoU”) to provide a formal basis for cooperation and coordination, including for the exchange, handling, protection and return of information in their possession and, where appropriate, investigative assistance with respect to companies and persons engaged in the business of insurance. The NYSID and the SSF express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates and functions.

**The NYSID** regulates all insurance business transacted in New York State and is the primary regulator for insurance entities domiciled therein. In its capacity as regulator, the NYSID administers, interprets and enforces the provisions of New York’s insurance laws and regulations, and is vested and charged with all rights, powers and duties as expressed or reasonably implied by the New York Insurance Law.

**The SSF** is the primary regulator and supervisor of the insurance business in El Salvador. Additionally, according to the Ley Orgánica de la Superintendencia del Sistema Financiero (the SSF Law), the SSF is responsible for regulating and supervising, among others, financial conglomerates, banks, non-bank financial institutions, exchange houses, and governmental credit institutions.

## Definitions

1. For purposes of this MoU, unless the context states otherwise:

- (a) “Administering” an applicable law, regulation or requirement includes enforcing the same.
- (b) “Applicable laws, regulations and requirements” means any law, regulation or requirement applicable in the State of New York and/or in El Salvador, and where the context permits, includes:
  - (i) Relevant Legislation that has not yet been transposed into New York law and/or into El Salvador’s financial laws;
  - (ii) Any law, regulation or requirement applicable in the State of New York or El Salvador; and
  - (iii) Any rule, direction, requirement, guidance or policy made or given by, or to be taken into account by an Authority.

(c) “Authority” or “Authorities” means the NYSID and/or the SSF.

(d) “Confidential Information” means:

Any documents or records deemed confidential by New York law and/or by Salvadoran financial laws, regulation, requirements or privilege, including, but not limited to, draft examination reports; examination work papers; analyses of financial condition; reports of fraudulent activity; records regarding holding company transactions; and trade secrets or records maintained for the regulation of commercial enterprise, which if disclosed would cause substantial injury to the competitive position of the subject enterprise. Confidential information also includes records the disclosure of which would constitute unwarranted invasion of personal privacy, would impair present or imminent contract awards or collective bargaining negotiations, or would endanger the life or safety of any person; records compiled for law enforcement purposes; certain inter-agency or intra-agency correspondence; computer access codes; and examination questions or answers requested prior to the final administration of such questions.

(e) “Emergency Situation” means any situation or event that could materially affect or impair the financial or operational condition of a Regulated Entity or Person or substantially affect the public interest of the jurisdiction of either Authority and that, accordingly, must be handled in an expedited manner.

- (f) “Hosting Authority” is the regulator and/or supervisor of the jurisdiction where a branch or a subsidiary of a foreign insurance company (parent) is established. It also means the Authority in whose jurisdiction the On-Site Inspection will be performed.
- (g) “Inspecting Authority” means the Authority performing the On-Site Inspection.
- (h) “NYSID” means State of New York Insurance Department.
- (i) “On-Site Inspection” means any routine or regulatory inspection or examination of the books, records or premises of a Regulated or Related Entity or Person.
- (j) “Person” means a natural person, legal entity, partnership or unincorporated association.
- (k) “Regulated Entity” or “Regulated Person” means a company or person engaged in insurance activities subject to the supervision of the NYSID and/or the SSF.
- (l) “Related Entity or Person” means a company or person engaged in insurance activities, or legal entities or sub-groups of a Regulated Entity or Person, including affiliates, branches or subsidiaries, regulated by the NYSID and/or the SSF.
- (m) “Requesting Authority” means the Authority seeking assistance/information.
- (n) “Responding Authority” means the Authority responding to a request for assistance/information.
- (o) “SSF” means the Superintendencia del Sistema Financiero de El Salvador.

## **Purpose and Objective of MoU**

2. The purpose of this MoU is to establish a formal basis for consultation, cooperation and coordination between the SSF and the NYSID, and to provide for the exchange of information relevant to each Authority’s supervisory, regulatory and examination responsibilities.

## **Requests for Assistance**

3. Requests for assistance include, among other things, requests to: (1) confirm or verify information; (2) obtain information about a specified person or entity; (3) discuss issues of mutual interest between the Authorities; (4) question or take testimony of persons designated by the Requesting Authority; and (5) conduct inspections or examinations of Regulated/Related Entities or Persons. Requests for assistance that include requests for Confidential Information shall follow the procedure set forth in this MoU. If a request for assistance is made under this agreement, each Authority shall use reasonable efforts to assist the other, subject to its laws and overall policy.

4. This MoU does not create any legally binding obligations, confer any rights, modify, or supersede any domestic laws or regulatory requirements in force in, or applying to, the State of New York or El Salvador. This MoU does not confer upon any person the right or ability, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this MoU. This MoU is not intended to affect any arrangements under any other MoUs in existence to which either of the Authorities is a party.

5. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

6. The Authorities shall consider and promptly respond to all requests for assistance regarding: (1) the safety, soundness, or financial condition of a Regulated Entity or Person; (2) the insurance activities of a Regulated Entity or Person; or (3) inquiries regarding regulated entities applying for a license to operate in the jurisdiction of each Authority. Where Confidential Information is involved, and its sharing is not prohibited by law, the decision to share this information is at the sole discretion of the Responding Authority; however, the Responding Authority shall use reasonable efforts to obtain and share such information.

### **Procedures for Making/Responding to Requests for Assistance**

7. To the extent possible, all requests for assistance shall be in writing and, if made orally, the provisions of Paragraph 13 below must be followed. Requests for assistance must be directed to the appropriate appointed contact person(s) identified in Exhibit A hereto, and should include the following:

(a) A description of the information, confirmation or verification sought by the Requesting Authority, identifying relevant persons and specific questions to be asked;

(b) A general description of the matter that is the subject of the request and the purpose for which the information is sought;

(c) The desired time period for reply, and where appropriate, an explanation of the urgency thereof; and

(d) A description of other persons or entities, if any, to whom further disclosure of information provided to the Requesting Authority would be necessary, and the purpose such disclosure would serve.

8. Each Responding Authority shall use reasonable efforts to assess, on a case-by-case basis, whether any Confidential Information that has been requested can be provided under the terms of this MoU. Where the request cannot be fulfilled in whole or in part, the Responding Authority shall consider whether it, or any other regulatory authority in its

jurisdiction, has the ability to render assistance to the Requesting Authority and, to the extent possible, shall use reasonable efforts to facilitate such assistance.

9. In deciding whether and to what extent to fulfill a request, the Responding Authority may take into account:

- (a) Whether the request for assistance conforms with this MoU;
- (b) Whether the request for assistance involves the administration of a law, regulation or requirement that has no close parallel in the jurisdiction of the Responding Authority;
- (c) Whether compliance with the request for assistance would be so burdensome as to disrupt the proper performance of the Responding Authority's regulatory functions;
- (d) Whether it would be detrimental or otherwise contrary to the public interest or the essential national interest of the Responding Authority's jurisdiction to provide the information requested;
- (e) Any other matters specified by the laws, regulations and requirements of the Responding Authority's jurisdiction (in particular those relating to confidentiality, professional secrecy, data protection, privacy and procedural fairness); and
- (f) Whether complying with the request may otherwise be prejudicial to the performance by the Responding Authority of its functions.

## **Confidentiality**

10. The Authorities may voluntarily and in their sole discretion provide information, including Confidential Information, without having received a request for assistance.

11. In responding to any request for assistance, the Responding Authority shall identify any information that is provided pursuant to this MoU that constitutes Confidential Information.

12. The Authorities agree to request Confidential Information only if it is relevant to their lawful supervision or examination of a Regulated Entity or Person, and shall use the Confidential Information they receive under this MoU only for those purposes.

13. To the extent possible, all requests for Confidential Information shall be made in writing and addressed to the appropriate appointed contact person(s) identified in Exhibit A. Where, due to an Emergency Situation or exceptional circumstances, an oral request is necessary, such request shall thereafter be confirmed by the Requesting Authority in writing within ten (10) business days. Requests for Confidential Information made at in-person meetings between the Authorities do not require a subsequent written confirmation if such oral requests will be noted in the minutes of the meetings between the Authorities.

14. In assessing a request for assistance or information, the Responding Authority may rely on the confirmation of equivalent confidentiality protections or other certification or confirmation by the Requesting Authority of its ability and authority to maintain the protected nature of Confidential Information. The Responding Authority may also rely on other relevant issues, such as its own knowledge of the Requesting Authority's practices and procedures.

15. The NYSID states that pursuant to New York Insurance Law § 110, it has the legal authority necessary to enter into this MoU and to protect from disclosure, and otherwise preserve, the confidential or privileged nature of any Confidential Information that it requests and receives pursuant to this MoU. A copy of the law establishing such authority is attached hereto as Exhibit B.

16. The SSF states that Articles 6 and 10 of the Ley de Sociedades de Seguros (LSS), the Salvadoran Insurance laws authorizes it to enter into this MoU and Articles 15, 26 and 36 of its Organic Law oblige it to protect from disclosure, and otherwise preserve, the confidential or privileged nature of any Confidential Information that it requests and receives pursuant to this MoU. A copy of the law establishing such authority is attached hereto as Exhibit B.

17. All Responding Authority Confidential Information belongs to, and shall remain the property of, the Responding Authority. The Requesting Authority shall, in accordance with applicable laws, regulations and pursuant to the terms of this MoU, take all actions reasonably necessary to preserve, protect, and maintain the confidentiality of such Confidential Information and any privileges associated therewith.

18. The Requesting Authority shall restrict access to Responding Authority Confidential Information to those employees and agents of the Requesting Authority who are subject to the Requesting Authority's confidentiality obligations, are under its direct supervision and control, and who have a need for such information that is consistent with, and directly related to, the purposes for which the information was requested.

19. The Requesting Authority may provide Confidential Information received under this MoU to other state, federal or international regulatory or law enforcement officials who have authority over the Regulated Entity that is the subject of the Confidential Information, provided that the Requesting Authority: (1) discloses to the Responding Authority the identity of each recipient with whom the Confidential Information will be shared; and (2) confirms that each recipient agrees to, and has the legal authority to, maintain the confidential status of the information provided. In all other cases the Requesting Authority will seek consent from the Responding Authority before disclosing any Confidential Information that it receives pursuant to this MoU.

20. Where there is a subpoena or other legally enforceable demand for information supplied under this MoU, the Requesting Authority shall notify the Responding Authority. The Requesting Authority shall use all reasonable legal means to resist such a demand,



including asserting such appropriate legal exemptions or privileges with respect to that information as may be available, and shall afford the Responding Authority the opportunity to take whatever action it deems appropriate to preserve, protect and maintain the confidential nature of the information provided, including consenting to any application by the Responding Authority to intervene in any action to preserve the confidentiality of Responding Authority Confidential Information.

21. Each Authority will attach a copy of the confidentiality provisions applicable in its country to this MoU as Exhibit B. The Authorities will inform each other in due course if the confidentiality regime is significantly affected by a change of law or a court decision.

### **On-Site Inspections**

22. The NYSID and the SSF recognize that cooperation is particularly useful in assisting each other in carrying out On-Site Inspections of Regulated or Related Entities and Persons in both jurisdictions. To that end, the Authorities agree to comply with the following procedures prior to conducting On-Site Inspections:

(a) The Inspecting Authority shall notify the Host Authority of: (1) the Inspecting Authority's intent to conduct an On-Site Inspection, by itself or by an authorized third party; (2) the time frame for the inspection; and (3) the scope of such inspection. Where practicable, the Inspecting Authority shall provide the Host Authority with 30 days advance notice of the inspection so that the Host Authority may incorporate it into its supervisory plan.

(b) The Host Authority may, in its discretion, accompany the Inspecting Authority to, and assist the Inspecting Authority with, any On-Site Inspections.

### **Costs**

23. Where the cost of fulfilling a request is deemed substantial, the Responding Authority may, on a case-by-case basis, require the Requesting Authority to bear some or all of such costs.

### **Consultation Between the Authorities**

24. The Authorities shall keep the operation of this MoU under review and shall consult with each other as necessary with a view to improving its operation and resolving any concerns that have arisen out of its operation.

25. Where a specific conduct outlined in a request for assistance constitutes a breach of a law, regulation or requirement in the jurisdiction of both Authorities, the Authorities shall consult with each other to determine the most appropriate means for each Authority to provide the assistance requested.

## Commencement and Termination of the MoU

26. This MoU shall take effect when both Authorities have signed it and shall continue to have effect until terminated by either Authority upon thirty (30) days written notice. Termination shall not in any way affect the rights or obligations of either Authority with respect to Confidential Information previously provided under this MoU or any privileges associated with such information.

27. This MoU supersedes and replaces all other existing agreements or representations, either oral or written, between the parties to this MoU regarding the sharing of information. No waiver, alteration or modification of the provisions of this MoU shall be effective until, and unless, subsequently made in writing and signed by duly authorized representatives of the Authorities.

### Executed by the Parties:

**For the New York State  
Insurance Department**

**For the Superintendencia del  
Sistema Financiero de El  
Salvador**



Eric R. Dinallo  
Superintendent of Insurance



Victor Antonio Ramirez  
Superintendent of the Financial  
System

Date: 6/18/09

Date: 6/29/09

**EXHIBIT A****Contact Persons for:**

**New York State Insurance Department  
25 Beaver Street  
New York, NY 10004**

Name: Joseph Fritsch  
Title: Director of Insurance Accounting Policy  
Telephone Number: (212) 480-2299  
Fax Number: (212) 480-2310  
Email: [jfritsch@ins.state.ny.us](mailto:jfritsch@ins.state.ny.us)

**OR**

Name: D. Monica Marsh  
Title: Supervising Attorney  
Telephone Number: (212) 480-5298  
Fax Number: (212) 480-5272  
Email: [dmarsh@ins.state.ny.us](mailto:dmarsh@ins.state.ny.us)

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**Contact Persons for:****Superintendencia del Sistema Financiero**

**7ª. Av. Norte No. 240, entre Calle Arce y 1ª. Calle Poniente, Apartado Postal No. 2942, San Salvador, El Salvador, C. A.**

Name: Victor Antonio Ramirez  
Title: Superintendent  
Telephone Number: (503) 2281-1466  
Fax Number: (503) 2281-2441  
E-mail: [varamirez@ssf.gob.sv](mailto:varamirez@ssf.gob.sv)

Name: Sigfredo Gómez  
Title: Intendant of other Financial Entities  
Telephone Number: (503) 2281-2444 Ext. 415  
Fax Number: (503) 2271-2516  
Email: [sgomez@ssf.gob.sv](mailto:sgomez@ssf.gob.sv)

Name: Ana Margoth Arévalo  
Title: Head of International Relations  
Telephone: (503) 2281-2402  
Fax Number: (503) 2281-2441  
Email: [marevalo@ssf.gob.sv](mailto:marevalo@ssf.gob.sv)

**EXHIBIT B****New York Insurance Confidentiality Statute:****Insurance Law § 110. Cooperation with Other Regulatory Agencies**

(a) In order to assist in the performance of the superintendent's duties under this chapter, the superintendent:

(1) may share documents, materials or other information, including the confidential and privileged documents, materials or information with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient has the authority and agrees to maintain the confidentiality and privileged status of the document, material or other information; provided, however, that this paragraph shall not be construed as limiting access to records pursuant to article six of the public officers law;

(2) may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information;

(3) may enter into agreements governing sharing and use of documents, materials or information consistent with this subsection.

(b) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in this section.

**Superintendencia del Sistema Financiero de El Salvador****Ley de Sociedades de Seguros (Salvadoran Insurance Laws)**

Art. 6.- Equity property of insurance companies constituted in El Salvador should remain, at a minimum, a seventy five percent, individually or as a group, in the following class of persons:

a) Persons natives of El Salvador or of Central America;

- b) Legal entities whose major shareholders are the natural persons referred in the previous letter;
- c) Insurance companies or reinsurers from Central America or from other foreign countries. In the case of those coming from outside the Central American area, they must have a high quality rating given by known international rating agencies in accordance to what the Superintendence establishes. *In both cases, they must operate according to the prudential regulation and supervision of their home country and complying with the applicable stipulations.*

No natural or legal person, directly or indirectly, can own more than one percent of the shares of an insurance company without previously being authorized by the Superintendence, for that matter the Superintendence will considered those aspects pointed in Art. 12 of this Law...

Art. 10.- Insurance companies may invest, with the prior authorization of the Superintendence, in shares of Salvadoran legal entities, as long as the following requirements are fulfilled:


- a) These entities are insurance companies that operate in a different segment of that of the investing company;
- b) These entities complement directly the services that insurance companies provide.
- c) That either individually or as a group with another insurance company, own more than fifty percent of the shares of that legal entity.

When investments are made in foreign legal entities, all requirements established in previous literals must be complied, in addition, they could invest in insurance companies operating in the same segment they operate. *The Superintendence, previous to the authorization, must establish communication and agree with the supervisor of the country where the investment will be done, the coordination of the supervisory activities.*


Ley Orgánica de la Superintendencia del Sistema Financiera (the SSF Law)

This Law makes confidentiality obligatory for members of the Board of Directors and employees of the Superintendence:

- (1) Art.15. Those attending Board meetings will be liable for damages and perjuries if they disclose confidential information regarding matters discussed there and (will be also liable) those that take advantage of information for personal benefit or to cause damage to the State, to the Superintendence, or to third parties. In addition, legal responsibilities might also be applied.

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- (2) Art.26. It is prohibited to any employee, delegate, agent or person at the service of the Superintendence, to disclose any detail of reports that have been issued or to disclose any reserved fact known in the course of their duties and responsibilities.

Those who infringe this disposition will be fired, without any responsibility for the Superintendence. This does not preclude any legal responsibility that they may be subjected as well.

- (3) Art.36. Information gathered by the Superintendence will be confidential and cannot be given to the tax collection offices, nor to any offices other than the Central Bank, the National Comptroller, the Attorney General's Office, and judicial courts, except when there are expressed authorizations within this and other laws.
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