

**MINIMUM STANDARDS FOR THE SUPERVISION
OF INTERNATIONAL BANKING GROUPS AND THEIR
CROSS-BORDER ESTABLISHMENTS
(July 1992)**

I. Introduction

In 1975, the Basle Committee obtained the agreement of the G-10 Governors to a paper setting out principles for the supervision of banks' foreign establishments. These arrangements, revised in 1983 and now better known as the Concordat, took the form of recommended guidelines for best practice, and members of the Committee undertook to work towards their implementation according to the means available to them. Subsequently, in April 1990, certain practical aspects of these principles were elaborated in a Supplement to the Concordat.

Following recent developments, the Committee has reviewed the arrangements for coordination of the supervision of international banking. While the principles of the Concordat and its supplement are still viewed as being sound, members of the Committee now recognise that there needs to be a greater effort to ensure that these principles can be applied in practice. Accordingly certain of these principles have been reformulated as minimum standards, set out below, which G-10 supervisory authorities expect each other to observe.

The supervisory authorities represented on the Basle Committee will be taking the necessary steps to ensure that their own supervisory arrangements meet the standards as soon as possible. Furthermore, the Committee will monitor members' experience in implementing them with a view to determining what further refinements are needed as part of its ongoing efforts to enhance cooperation in the supervision of international banks. The Committee is making this paper available to bank supervisory authorities throughout the world and is urging them to join with the authorities represented on the Committee in adhering to the minimum standards.

The Committee has also reviewed the April 1990 Supplement to the Concordat on "*Information Flows Between Banking Supervisory Authorities*" which provides practical guidance for ongoing contact and collaboration among supervisory authorities. The Committee's conclusion is that the nature and extent of information-sharing possible amongst supervisory authorities must continue to be determined largely on a case-by-case basis and cannot, at this time, be usefully expressed in minimum standards. Nevertheless, consistent

with the April 1990 Supplement, the Committee believes that supervisory authorities should undertake an affirmative commitment to cooperate, on a best-efforts basis, with supervisory authorities from other countries on all prudential matters pertaining to international banks, and, in particular, in respect of the investigation of documented allegations of fraud, criminal activity, or violations of banking laws. In addition, both the Committee and its members will continue their efforts to reduce impediments to the sharing of information among supervisory authorities.

II. Minimum standards for supervision

Banking groups are increasingly complex organisations and may have several tiers of ownership within them. In some cases, a banking group's home country consolidated supervisory authority will also be the authority directly responsible for the supervision of the group's lead and subsidiary banks. However, in other cases, there will be one authority responsible for the consolidated supervision of the banking group as a whole (the *banking group's* home country authority) and different authorities responsible for the consolidated supervision of individual banks (and such banks' own subsidiaries) that are owned or controlled by the group (the *bank's* home country authority). This may occur, for example, where a banking subsidiary chartered in one country, which is seeking to create an establishment in a second country, is itself owned by a banking group subject to home country consolidated supervision in a third country. A host country authority must be aware of these distinctions between immediate and higher-level home country authorities. Except where specified, the term home country authority includes both types of authority.

The following four minimum standards are to be applied by individual supervisory authorities in their own assessment of their relations with supervisory authorities in other countries. In particular, a host country authority, into whose jurisdiction a bank or banking group is seeking to expand, is called upon to determine whether that bank or banking group's home country supervisory authority¹ has the necessary capabilities to meet these minimum standards. In making this determination, host country authorities should review the other authority's statutory powers, past experience in their relations, and the scope of the other authority's administrative practices. Some authorities may initially need to make either statutory or administrative changes in order to comply with these new standards; therefore, in cases where

¹ In some countries, supervisory responsibility is shared among two or more authorities. The word "authority" is used to include all relevant authorities in any one country.

an authority fails to meet one or more of these standards, recognition should be given to the extent to which the authority is actively working to establish the necessary capabilities to permit it to meet all aspects of these minimum standards.

1. All international banking groups and international banks should be supervised by a home country authority that capably performs consolidated supervision

As a condition for the creation and maintenance of cross-border banking establishments, a host country authority should assure itself that the relevant bank and, if different, the banking group is subject to the authority of a supervisor with the practical capability of performing consolidated supervision. To meet this minimum standard, the home country supervisory authority should (a) receive consolidated financial and prudential information on the bank's or banking group's global operations, have the reliability of this information confirmed to its own satisfaction through on-site examination or other means, and assess the information as it may bear on the safety and soundness of the bank or banking group, (b) have the capability to prevent corporate affiliations or structures that either undermine efforts to maintain consolidated financial information or otherwise hinder effective supervision of the bank or banking group, and (c) have the capability to prevent the bank or banking group from creating foreign banking establishments in particular jurisdictions.

2. The creation of a cross-border banking establishment should receive the prior consent of both the host country supervisory authority and the bank's and, if different, banking group's home country supervisory authority

Consent by a host country authority for the inward creation of a cross-border banking establishment should only be considered if the appropriate home country authorities have first given their consent to the bank or banking group's outward expansion. Outward consent by a home country authority should always be made contingent upon the subsequent receipt of inward consent from the host authority. Thus, in the absence of consent by both the host country authority and the bank's home country authority and, if different, the banking group's home country authority, cross-border expansion will not be permitted. As a matter of procedure, a host country authority should seek to assure itself that consent has been given by the supervisory authority directly responsible for the entity seeking to create an establishment; this authority, in turn, should assure itself that consent is given by the next higher tier supervisory authority, if any, which may perform consolidated supervision with respect to the entity as part of a banking group.

While the safety and soundness of a bank should be judged by its overall condition, in reviewing proposals for inward and outward expansion, host country and home country authorities should, at a minimum, give weight to (a) the strength of the bank's and banking group's capital and (b) the appropriateness of the bank's and banking group's organisation and operating procedures for the effective management of risks, on a local and consolidated basis respectively. In judging these two criteria, a host country authority should be particularly concerned with the level of support that the parent is capable of providing to the proposed establishment.

The business activities of major international banking groups increasingly cut across traditional supervisory categories. Individual activities or products may be managed on a centralised or decentralised basis, without particular regard to corporate form or the location of a bank's or group's head office. Because of this, before giving consent to the creation of a cross-border establishment, the host country authority and the bank's and banking group's home country authorities should each review the allocation of supervisory responsibilities recommended in the Concordat in order to determine whether its application to the proposed establishment is appropriate.

If, as a result of the establishment's proposed activities or the location and structure of the bank's or the banking group's management, either authority concludes that the division of supervisory responsibilities suggested in the Concordat is not appropriate, then that authority has the responsibility to initiate consultations with the other authority so that they reach an explicit understanding on which authority is in the best position to take primary responsibility, either generally or in respect of specific activities. A similar review should be undertaken by all authorities if there is a significant change in the bank's or banking group's activities or structure.

Inaction on the part of either authority will be construed as an acceptance of the division of responsibilities established in the Concordat. Thus, each authority is responsible for making a deliberate choice between accepting its responsibilities under the Concordat or initiating consultations on an alternative allocation of supervisory responsibilities for the case at hand.

3. Supervisory authorities should possess the right to gather information from the cross-border banking establishments of the banks or banking groups for which they are the home country supervisor

As a condition for giving either inward or outward consent for the creation of a cross-border banking establishment, a supervisory authority should establish an understanding with the

other authority that they may each gather information to the extent necessary for effective home country supervision, either through on-site examination or by other means satisfactory to the recipient, from the cross-border establishments located in one another's jurisdictions of banks or banking groups chartered or incorporated in their respective jurisdictions. Thus, consent for inward expansion by a prospective host country authority should generally be contingent upon there being such an understanding, with the foreign bank's or banking group's home country authority, that each authority may gather such information from their respective bank's and banking group's foreign establishments. Similarly, consent for outward expansion by the home country authority should generally be contingent upon there being such an understanding with the host country authority. Through such bilateral arrangements, all home country authorities should be able to improve their ability to review the financial condition of their banks' and banking groups' cross-border banking establishments.

4. If a host country authority determines that any one of the foregoing minimum standards is not met to its satisfaction, that authority could impose restrictive measures necessary to satisfy its prudential concerns consistent with these minimum standards, including the prohibition of the creation of banking establishments

In considering whether to consent to the creation of a banking establishment by a foreign bank or foreign banking group, or in reviewing any other proposal by a foreign bank or banking group which requires its consent, a host country authority should determine whether the bank or banking group is subject to consolidated supervision by an authority that has - or is actively working to establish - the necessary capabilities to meet these minimum standards. First, the host country authority should determine whether the bank or banking group is chartered or incorporated in a jurisdiction with which the host country authority has a mutual understanding for the gathering of information from cross-border establishments. Secondly, the host country authority should determine whether consent for outward expansion has been given by the appropriate home country authorities. Thirdly, the host country authority should determine whether the bank and, if different, the banking group is supervised by a home country authority which has the practical capability of performing consolidated supervision.

If these minimum standards are not met with respect to a particular bank or banking group, and the relevant home country authorities are unwilling or unable to initiate the effort to take measures to meet these standards, the host country authority should prevent the creation in its jurisdiction of any cross-border establishments by that bank or banking group. However, in its

sole discretion, the host country authority may alternatively choose to permit the creation of establishments by such a bank or banking group, subject to whatever prudential restrictions on the scope and nature of the establishment's operations which the host country authority deems necessary and appropriate to address its prudential concerns, provided that the host country authority itself also accepts the responsibility to perform adequate supervision of the bank's or banking group's local establishments on a "stand-alone" consolidated basis.

Thus, if a bank or banking group is not subject to the level of supervision and supervisory cooperation required by these minimum standards, and the relevant supervisory authority is not actively working to establish the necessary capabilities, that bank or banking group will only be permitted to expand its operations into jurisdictions whose authorities are adhering to these minimum standards if the host country authority itself accepts the responsibility to perform supervision of the bank or banking group's local establishments consistent with these minimum standards.