

Memorandum of Understanding (Credit Rating Agencies)



**Brazil
Comissão de Valores
Mobiliários**



**United Kingdom
Financial Conduct
Authority**

RECITALS

- A. The UK Financial Conduct Authority (the “FCA”) and the Comissão de Valores Mobiliários (the “CVM”) (together the “Authorities”) have reached this Memorandum of Understanding regarding arrangements for cooperation and the exchange of supervisory information related to Cross-Border CRAs (as defined in Article 1 below).
- B. The CVM is responsible for registration and supervision of credit rating agencies established or certified in Brazil in accordance with Law No. 6,385 (Securities Act) and CVM Resolution No. 9 (as amended).
- C. The FCA is responsible for the registration and supervision of credit rating agencies established or certified in the United Kingdom in accordance EU Regulation 1060/2009, as amended and supplemented by Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/266) (together, the UK Credit Rating Agencies Regulation).
- D. It is the intent of the Authorities to cooperate on supervision of Cross-Border CRAs primarily through the Supervisory Colleges for Credit Rating Agencies. This agreement will provide for the processes for the Authorities to exchange information at these colleges. Where necessary this agreement will also govern cooperation between the Authorities in relation to the supervision of Cross-Border Credit Rating Agencies outside of these Supervisory Colleges.

Article 1: Definitions

For purposes of this Agreement the following definitions apply:

1. “Authority” means a signatory to this Agreement or any successor thereof (together the “Authorities”);
2. “Credit Rating Agency” (“CRA”) means:
 - a. In Brazil, a legal person or a group of persons whose occupation includes the issuing of opinions regarding creditworthiness on a professional basis, subject to registration or certification with and oversight by the CVM
 - b. In the United Kingdom, a legal person or group of persons whose occupation includes the issuing of issue of opinions regarding creditworthiness on a professional basis, subject to registration or certification with and oversight by the FCA;
3. “Cross-Border CRA” means a CRA included in Appendix 1, which is supervised by: (i) both Authorities through registration, certification or the equivalent or (ii) one Authority, where the CRA is part of the same group as another CRA subject to supervision, oversight, registration or extension of registration, certification, recognition or authorisation by the other Authority;
4. “Laws and Regulations” mean all legally binding national and international rules concerning the regulation and supervision of CRAs and groups of CRAs applicable in the jurisdictions of the Authorities that fall within the competence of the Authorities;

5. "Person" means a natural or legal person, or an unincorporated entity or association, including but not limited to partnerships and trusts;
6. "Requested Authority" means an Authority to whom a request is made under this Agreement;
7. "Requesting Authority" means an Authority who makes a request under this Agreement; and
8. "Supervisory Colleges" means the colleges established under the framework of the IOSCO Final Report on Supervisory Colleges for Credit Rating Agencies.¹

Article 2: Scope of cooperation

1. The Authorities intend to cooperate in relation to supervisory oversight of Cross-Border CRAs, including, but not limited to:
 - a. Cooperation and exchange of information at the Supervisory Colleges;
 - b. Any other areas of mutual supervisory interest relating to Cross-Border CRAs where needed outside of the Supervisory Colleges.
2. Cooperation will be most useful in, but is not limited to, the following circumstances:
 - a. The initial application for authorisation, registration or certification of a Cross-Border CRA, or for exemptions there from;
 - b. The ongoing oversight of a Cross-Border CRA and of its operation in the jurisdiction of one of the Authorities; and
 - c. Where there is a request for any assistance by either of the Authorities to the other.

Article 3: Cooperation in relation to authorisation, registration and certification procedures

1. The Authorities intend to cooperate during the authorisation, registration or certification of a Cross-Border CRA in order to enable a full assessment of the Cross-Border CRA's application, and in the case of withdrawal of the authorisation, registration or certification of a Cross-Border CRA by an Authority.
2. When a CRA applies for authorisation, registration or certification with an Authority, and the Authority considers that the CRA could be a Cross-Border CRA, the Authority will accordingly notify the other Authority about the status of the CRA's authorisation, registration or certification and will provide it with information regarding the CRA's cross-border operations.
3. Following the initial sharing of information, the Authorities will consult each other and attempt to reach agreement regarding whether or not they consider this CRA to be a Cross-Border CRA.
4. The Requested Authority, upon written request, intends to provide to the Requesting Authority the following:
 - a. Information held on file regarding: (i) the Cross-Border CRA's internal organisation and rating process, and (ii) views from the Requested Authority regarding the Cross-Border CRA's systems and controls, senior management and governance structures, management of conflicts of interest procedures and the rating process in general;
 - b. A statement regarding whether or not the Cross-Border CRA has been authorised, registered or certified to conduct credit rating activities in the Requested Authority's

¹ <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD416.pdf>

- jurisdiction and is subject to supervision by the Requested Authority and a meaningful description of the nature of such authorisation, registration or certification and supervision;
- c. Information regarding any formal supervisory and enforcement action that has been taken regarding the Cross-Border CRA's compliance or lack of compliance with the applicable Laws and Regulations; and
 - d. The applicable Laws and Regulations on which the authorisation, registration or certification as well as the supervision are based.
5. Where required, the Authorities may cooperate in any other manner not specified above in order to facilitate a full assessment of a Cross-Border CRA's application for authorisation, registration or certification.

Article 4: Exchange of Information on Supervisory or Enforcement Actions against Cross-Border CRAs

1. The Authorities intend to inform each other as soon as possible after taking any supervisory or enforcement actions with regard to a Cross-Border CRA, including but not limited to the following:
 - a. Referrals of matters for criminal prosecution;
 - b. Imposition of financial penalties, pursuant to the legislation in force in each of the relevant jurisdictions;
 - c. Suspension of an individual who sits on the Cross-Border CRA's management or supervisory board;
 - d. Full or partial withdrawal of the Cross-Border CRA's authorisation, registration, or certification;
 - e. Temporary prohibition of the Cross-Border CRA's issuing of credit ratings that are used in the other Authority's jurisdiction for regulatory purposes;
 - f. Suspension of the use, for regulatory purposes, of the credit ratings issued by the Cross-Border CRA;
 - g. Issuing by the Authority of a public notice of a Cross-Border CRA's breach of the applicable laws and regulations;
 - h. On-site inspection of a Cross-Border CRA and core findings derived from such an inspection; and
 - i. Formal written recommendations to improve a Cross-Border CRA's systems and controls.
2. Where an Authority takes any of the supervisory or enforcement actions described in paragraph 1 above, it intends to inform the other Authority as to whether or not the action is subject to appeal by the Cross-Border CRA.
3. The Authorities intend to promptly notify each other of the initiation of any steps regarding the:
 - a. Withdrawal of authorisation, registration or certification of a Cross-Border CRA;
 - b. Imposition of prohibition of a Cross-Border CRA's operations that affect the other Authority's jurisdiction;
 - c. Suspension of the use of a Cross-Border CRA's credit ratings for regulatory purposes;
 - d. Measures to ensure that a Cross-Border CRA continues to comply with any regulatory or supervisory instructions; and

- e. Issuing of a public notice stating that a Cross-Border CRA is in breach of the applicable laws and regulations.

Article 5: Specific Information

The Authorities intend to regularly share and discuss any significant information on specific Cross-Border CRAs which is likely to be relevant to their supervisory relationship with the relevant Cross-Border CRA, where, and to the extent that it is appropriate to do so in light of the Cross-Border CRA's significance. The Authorities intend to share this information primarily through the Supervisory Colleges. The information which the Authorities intend to exchange includes, where relevant, without limitation:

- a. Information that would permit the Requesting Authority to verify that the Cross-Border CRA is able to comply and complies with obligations and requirements set out in the applicable laws and regulations in the jurisdiction of the Requesting Authority; and
- b. Information relevant to the governance, the financial, organisational, and operational conditions, or IT systems and internal controls of the Cross-Border CRA, including, for example, on:
 - Relevant supervisory information prepared by an Authority, including, for example, findings or information drawn from examination reports regarding the Cross-Border CRA;
 - Information on the actions implemented by the Cross-Border CRA to remediate deficiencies and shortcomings in complying with the conditions of authorisation, registration, certification, or of any Applicable Laws and Regulations;
 - Authorities' supervisory plans for Cross-Border CRAs if such plans exist;
 - Information that may have a significant impact on the ongoing supervision of Cross-Border CRAs; and
 - Information about approaches to the supervision of Cross Border CRAs and notification of changes by the Authority of its approach to its supervision of Cross-Border CRAs.

Article 6: Meetings

To enhance the quality of cooperation and assistance, the Authorities may:

- a. Convene ad hoc meetings to discuss material issues of common concern and/or coordinate actions, if deemed appropriate, for instance where specific conduct by a Cross-Border CRA may constitute a breach in both jurisdictions, or to address material supervisory problems concerning a Cross-Border CRA in either or both Authorities' jurisdiction(s).
- b. Agree to conduct regular meetings that concern Cross-Border CRAs relevant to their jurisdictions.

Article 7: Supervisory Programmes

To facilitate the ongoing supervision of Cross-Border CRAs and to better understand the supervisory regime applied by the other Authority, the Authorities may agree to establish supervisory programmes for specific Cross-Border CRAs. Such supervisory programmes may cover relevant tasks and activities, such as:

- a. Pre-planned meetings between the Authorities; and
- b. Pre-planned cross-border on-site visits of the Cross-Border CRAs.

Article 8: Personal Data

The Authorities acknowledge that any transfer of personal data between the Authorities will take place in accordance with the conditions laid down in the relevant data protection legislation applicable to the Authorities.

Article 9: Confidentiality and Onward Sharing of Information

1. Each Authority will keep confidential information shared under this Agreement, requests made under this Agreement, and any other matters arising under this Agreement, save where:
 - a. The Authority sharing the information gives written permission for the onward disclosure of the information; or
 - b. Disclosure is necessary for legal proceedings,
 - i. In Brazil those include legally enforceable demands such as mandatory disclosure to defendants and requests from the Public Prosecutor's Office, the Judiciary or Congressional committees.
2. In the event of a legally enforceable demand under Article 9(1)(b), the Authority in question will notify the Authority which has transmitted the information prior to complying with the demand and will assert such appropriate legal exemptions or privileges with respect to such information as may be available.
3. Where the urgency of the request for information under Article 9(1)(b) means it is not possible for an Authority to notify the other Authority prior to the disclosure, as is required by Article 9(2), the Authority disclosing the information will notify the other Authority as soon as possible after any such urgent disclosure is made.
4. Each Authority acknowledges that the obligation of professional secrecy shall apply to themselves, all persons who work or who have worked for the Authority, and any other person to whom the Authority has delegated tasks, including auditors and experts they have contracted.

Each Authority acknowledges that measures are in place in its jurisdiction to ensure professional secrecy and the protection of confidential information.
5. The Authorities acknowledge that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, pursuant to the terms of this Agreement, will not constitute a waiver of privilege or confidentiality of such information.
6. The terms of this Agreement are not confidential.

Article 10 Confirmation of no interference

1. The Authorities confirm that they do not have the power to interfere with the content of credit ratings produced by or the methodologies used by CRAs in their respective jurisdictions.

Article 11 Amendments to this Agreement

1. If either Authority wishes to amend the Agreement, including adding additional CRA to Appendix 1, any amendments must be agreed to by both Authorities.

Article 12: Entry into Force

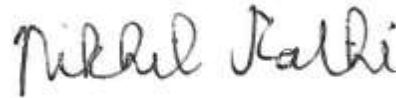
This Agreement enters into force on the date it is signed.

Signed:



Marcelo Barbosa
Chairman
Comissão de Valores Mobiliários

Date: 10.12.2021



Nikhil Rathi
Chief Executive
Financial Conduct Authority

Date: 02/12/2021