



Guidelines

Guidelines on Being Authorised as a Representative Office of a Foreign Bank

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Introduction

1. A foreign bank wishing to establish a representative office in Australia must obtain APRA's written consent under section 67 of the *Banking Act 1959* (Banking Act). Consent under section 66 of the Banking Act is also required for a foreign bank to use the word 'bank' or its equivalent as part of the bank's corporate name in connection with maintaining a representative office (refer to *Guidelines on Implementation of Section 66 – Banking Act 1959*).
2. A foreign bank wishing to establish a representative office in Australia will usually be required to meet minimum entry standards and comply with certain operating conditions, set by APRA. Further information about these standards and conditions is set out below. Failure to comply with the operating conditions may lead to revocation of the consent to maintain a representative office in Australia. Conditions may be varied at any time.
3. Foreign banks may also apply to establish locally incorporated banking subsidiaries in Australia or apply to operate through branches (refer to *Guidelines on Authorisation of ADIs*).

Entry criteria

4. An applicant wishing to establish a representative office in Australia will usually need to satisfy APRA that it:
 - (a) is recognised as a bank under the laws of its home country;
 - (b) is of good substance and repute;
 - (c) is subject to adequate standards of prudential supervision in its home country; and
 - (d) has received approval from its home country supervisor to establish a representative office in Australia.

Information to support an application

5. In order to satisfy APRA that it meets the above criteria, an applicant should submit the following information to APRA:
 - (a) evidence of its status as a bank under the laws of its home country (i.e. a copy of its banking licence or authority);
 - (b) a copy of its most recent annual report (including audited accounts) and any subsequent public financial statements (in English);
 - (c) names of directors and substantial shareholders (direct and indirect) where these are not disclosed in the annual report;
 - (d) a brief history of the applicant, including details of its main activities;
 - (e) a description of the proposed functions of the representative office and an indication of the number of personnel to be assigned to the office;
 - (f) the name of the proposed Chief Representative and the address and contact numbers of the proposed office (if not known at the time of the application, to be provided as soon as possible after authority is given by APRA for the representative office to be established);
 - (g) the name and position of the officer in the applicant's Head Office to whom the Chief Representative will report and an outline of how the operations of the representative office are to be monitored to ensure that the conditions attaching to the consent to maintain the office are observed;
 - (h) details of equity interests held by the applicant (or its ultimate parent) in Australian financial enterprises, and an outline of the nature of the business carried on by those enterprises;

- (i) written confirmation from its home country supervisor (where the applicant is part of a group of companies, from the supervisor in the country where the group conducts the bulk of its banking activities) that:
 - (i) it does not object to the application;
 - (ii) the applicant is of good repute and satisfies all prudential requirements; and
 - (iii) the applicant's operations are supervised on a consolidated basis consistent with internationally agreed standards;
 - (j) advice as to whether the applicant has ever had an application to establish a presence in another country rejected or had an approval to conduct a representative office or banking operation in another country suspended or revoked, and the reasons for that action;
 - (k) written confirmation that the foreign bank has registered as a foreign company under the *Corporations Act 2001* (the Corporations Act) and is not required to obtain an Australian Financial Services Licence under the Corporations Act; and
 - (l) a written undertaking that the applicant will at all times comply with the conditions relating to the operation of the representative office in Australia.
6. APRA reserves the right to seek further information from applicants, and to contact other supervisory authorities about an applicant.

Conditions which generally apply to the operations of representative offices in Australia

7. If APRA approves an application for the application of a representative office, the following conditions will generally be imposed:
- (a) The business of a representative office must be confined to the conduct of liaison and research activities. Examples of permissible activities include: conducting research into the Australian economy; liaising with Australian customers of the bank; the provision of factual information relating to the bank's products and services upon request; undertaking credit assessments and reports on Australian entities for the bank.
 - (b) The representative office must not conduct any form of banking business or activity related to the administration of banking business. Examples of prohibited activities include: soliciting deposits; receiving deposits (this includes arranging for members of the public to deposit moneys into any account conducted with an authorised bank in Australia in the name of the representative office or the foreign bank, e.g. for remittance overseas); granting loans; drawing, accepting, endorsing or discounting bills of exchange; establishing letters of credit; dealing in or issuing securities; dealing in derivative products; buying or selling foreign exchange; complaints handling and/or dispute resolution in relation to any financial services business conducted in Australia; or executing any documentation for any of the foregoing purposes.
 - (c) The representative office must not engage directly in financial transactions (whether within Australia or overseas), except transactions which are necessary for and incidental to the maintenance of the office in Australia.
 - (d) The name of the foreign bank must only be used by the representative office in conjunction with the description 'representative office' (and in accordance with consent granted under section 66 of the Banking Act). Restrictions on usage include office signage, letterheads, advertising and business cards.
 - (e) The activities of the representative office must be kept separate from those of any financial enterprise operating in Australia. In particular, a representative may not also be an employee or director with day-to-day responsibilities of any financial enterprise operating in Australia, and the representative office must be distinctly located from the office of any other financial enterprise. If a foreign bank with a representative office in Australia takes an equity position in a financial institution operating in Australia, it must notify APRA immediately.

- (f) The Chief Representative should be an employee of the foreign bank and should possess the competence, character, diligence, honesty, integrity and judgement necessary to perform properly the duties of the position of Chief Representative. The Chief Representative should be generally present in Australia.
 - (g) An Australian Federal Police check for a Chief Representative (obtained no more than six months prior to submission) must be submitted to APRA within three months of the date of his/her appointment. If a Chief Representative has not been ordinarily resident in Australia immediately prior to his/her appointment, a police check must instead be provided from the country where the Chief Representative was ordinarily resident immediately prior to appointment.
 - (h) Each representative, on taking up duties, must provide to APRA a written acknowledgement that he/she will ensure that the conditions applicable to the operation of the representative office will be complied with at all times.
 - (i) Each foreign bank with a representative office in Australia must provide to APRA every year a statement confirming that the representative office is complying with the conditions applying to its consent. This statement should be signed by the executive in the foreign bank's Head Office with responsibility for oversight of the Australian representative office, or by some other appropriate member of senior management.
 - (j) Any proposal to close or change the location of a representative office, or to change the Chief Representative, must be immediately advised to APRA.
 - (k) APRA must be informed immediately of any change in the arrangements for the foreign bank's oversight of its representative office in Australia.
 - (l) A foreign bank which has a representative office in Australia must immediately inform APRA of any significant developments adversely affecting its financial soundness and/or reputation globally, and must promptly provide APRA each year with a copy of its published financial accounts (in English).
 - (m) The representative office in Australia of a foreign bank must comply with all applicable Australian laws and must immediately inform APRA in writing of any breach or alleged breach of an applicable law and, in addition, must immediately inform APRA in writing of any event which results or might reasonably be expected to result in the cancellation or suspension of the bank's registration as a foreign company under the Corporations Act.
 - (n) The representative office must promptly provide to APRA any information requested relating to its operations.
8. A foreign bank will also need APRA's consent to establish representative offices in more than one location in Australia or to share a representative office with another foreign bank.

Applications to establish a representative office

- 9. Applications to establish a representative office should be addressed to the General Manager, Enforcement, Australian Prudential Regulation Authority.
- 10. Applications for registration under the Corporations Act must be lodged with the Australian Securities and Investments Commission.

Charges levied for establishment and maintenance of a representative office

- 11. An application fee of \$3,300 (inclusive of GST) is payable to APRA for dealing with an application by a foreign bank for APRA's consent under paragraph 67(1)(c) of the Banking Act to the foreign bank establishing and maintaining a representative office in Australia. This fee is payable on lodgement of the application and will not be refunded if the application is refused.

12. A charge of \$5,500 (inclusive of GST) per financial year is payable to APRA for APRA's monitoring of the operations of the representative offices of a foreign bank. (The monitoring is undertaken in discharge of APRA's function of consenting to the maintenance of the representative offices under paragraph 67(1) (c) of the Banking Act, and for the purpose of ensuring that the foreign bank is complying with the conditions imposed on it under subsection 67(2) of the Banking Act.) This fee will be levied by invoice at the beginning of the financial year and no part will be refunded if the representative office closes before the end of that financial year. The same annual charge applies regardless of how many representative offices the foreign bank maintains in Australia.



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