



GUIDELINES

Restricted Words under the *Banking Act 1959*

20 August 2018

Disclaimer and Copyright

While APRA endeavours to ensure the quality of this publication, it does not accept any responsibility for the accuracy, completeness or currency of the material included in this publication and will not be liable for any loss or damage arising out of any use of, or reliance on, this publication.

© Australian Prudential Regulation Authority (APRA)

This work is licensed under the Creative Commons Attribution 3.0 Australia Licence (CCBY 3.0). This licence allows you to copy, distribute and adapt this work, provided you attribute the work and do not suggest that APRA endorses you or your work. To view a full copy of the terms of this licence, visit <https://creativecommons.org/licenses/by/3.0/au/>

Contents

Summary	4
Chapter 1 - Overview	5
Chapter 2 - Guidance for businesses not regulated by APRA	7
2.1. Determining if an application is required	7
2.2. Non-financial businesses – request for confirmation that section 66 does not apply	8
2.3. Financial businesses – application for approval	8
Chapter 3 - Guidance for ADIs and applicants for authorisation	10
3.1. Authorised deposit-taking institutions	10
3.2. Applications for authorisation to conduct banking business	10
Chapter 4 - Contacts	11

Summary

The *Banking Act 1959* (Banking Act) places restrictions on financial businesses using certain words and expressions related to banking. Under sections 66 and 66A of the Banking Act, only persons that have been granted approval by APRA can use the following words or expressions in Australia in relation to their financial business (unless an exception in the Banking Act applies):

- 'bank', 'banker' and 'banking';
- 'building society', 'credit union', 'credit society' and 'credit co-operative';
- 'authorised deposit-taking institution'; and
- 'ADI' (except where these letters are used as part of another word).

Similar words and expressions, whether in English or other languages, are also restricted. These restrictions apply to any 'financial business', meaning a business that includes or relates to the provision of financial services, whether or not in Australia.

APRA only grants permission for financial businesses that are not authorised deposit-taking institutions (ADIs) to use these restricted words or expressions in very rare or unusual circumstances.

If your business is a financial business that is not an ADI, and you wish to use a restricted word or expression, refer to section 2.3 below for information on making an application to APRA for approval.

If your business is not a financial business and you propose to use a company name or business name that contains a restricted word or expression, you are still required to obtain confirmation from APRA that section 66 or 66A does not apply before registering the name with the Australian Securities and Investments Commission (ASIC). Refer to section 2.2 below for information on requesting this confirmation.

Under the Banking Act, there is no restriction on an ADI using the restricted expressions 'authorised deposit-taking institution' and 'ADI'. An ADI is also permitted to use the restricted words 'bank', 'banker' and 'banking' unless APRA determines otherwise. Applicants for authorisation as an ADI should contact APRA about the circumstances in which it may be permissible to use a restricted word or expression. Chapter 3 provides further guidance for ADIs and applicants for authorisation.

Chapter 1 - Overview

These Guidelines outline the operation of sections 66 and 66A of the Banking Act for businesses (whether regulated by APRA or not) that propose to use a restricted word or expression.

The restrictions limit the use of certain words and expressions by financial businesses that are not ADIs (i.e. banks, credit unions and building societies that are authorised by APRA to accept deposits from customers) to very rare and unusual circumstances.

The use of the following words and expressions in Australia in relation to a financial business is restricted¹:

- 'bank', 'banker' and 'banking';
- 'building society', 'credit union', 'credit co-operative' and 'credit society'; and
- 'authorised deposit-taking institution' and 'ADI'.

Words or expressions (whether or not in English) of similar meaning to a restricted word or expression are also restricted. This means that words such as 'banc' and 'banque' are restricted.

The use of a restricted word or expression as part of another word or expression, or in combination with other words, letters or symbols, is restricted. This means that words and expressions such as 'investment bank' and 'neobank' are restricted. However, the restrictions do not apply to the use of the letters 'ADI' as part of another word.

It is an offence for a person to use a restricted word or expression in Australia in relation to a financial business, except where APRA has granted a consent or exemption, or where a statutory exception applies. The penalty for this offence is 50 penalty units² for each day that a restricted word or expression is used. At the time of publication of these guidelines, 50 penalty units is equivalent to \$10,500 for an individual and \$52,500 for a corporation.³

APRA has granted the following types of financial businesses a class consent under section 66, allowing them to use certain restricted words or expressions:

- building societies;
- credit unions;
- trustees of ADI staff superannuation funds;
- foreign banks issuing securities in parcels not less than \$500,000; and
- offshore banking units.

¹ APRA has made a determination under sub-section 66(5) of the Banking Act that 'credit co-operative' is a restricted expression. The other expressions are restricted under sections 66 and 66A of the Banking Act.

² A *penalty unit* is defined in section 4AA of the *Crimes Act 1914*.

³ The *Crimes Act 1914* allows a court to impose a fine on a corporation of up to five times the penalty applicable to an individual.

Further details are available from APRA's website, in the section [*Authorised deposit-taking institutions determinations and consent orders*](#).

Chapter 2 - Guidance for businesses not regulated by APRA

2.1. Determining if an application is required

The threshold test for whether section 66 of the Banking Act applies to a non APRA-regulated business is whether the restricted words or expressions will be used in Australia in relation to a financial business conducted anywhere in the world.

A financial business is a business that provides 'financial services'. It may also be a business that relates to the provision of financial services by another person, such as a related company in a group.

'Financial services' are not defined in the Banking Act; however, APRA considers that they include:

- banking business as defined in the Banking Act;
- the provision of financial products as defined in the *Corporations Act 2001* including:
 - financial advice and planning business;
 - investment business;
 - insurance business;
- the provision of finance as defined in the *Financial Sector (Collection of Data) Act 2001*;
- the provision of products and services regulated under the *National Consumer Credit Protection Act 2009*;
- finance broking;
- financial services comparison websites;
- specialist financial services directory websites;
- superannuation funds (except for self-managed superannuation funds); and
- borrowing, lending and other transactions (such as entering into hire-purchase agreements or financial leases or providing credit in other forms) in which the subject of the transaction is finance.

A business that is required to have an Australian Financial Services Licence (AFSL) or Australian Credit Licence (ACL) from the Australian Securities and Investments Commission (ASIC) would also be considered to be a financial business.

If a financial business wishes to use a restricted word or expression in Australia, then an application for approval will be required: refer to **section 2.3**.

2.2. Non-financial businesses – request for confirmation that section 66 does not apply

ASIC requires a person seeking to register a business name or company name containing a restricted word or expression to provide confirmation from APRA that the business name or company name may be registered without contravening the Banking Act.⁴

A request for confirmation that section 66 or 66A does not apply should be directed to APRA at one of the contact points provided in Chapter 4. Requests must contain sufficient detail to demonstrate to APRA's satisfaction that the applicant does not carry on a 'financial business'. This generally means the following minimum level of detail:

- current contact details and proposed name of the applicant;
- the nature of the business or proposed business; and
- a description of all activities of the business or proposed business that may include or relate to the provision of financial services, or confirmation that there are none.

Requests for confirmation that section 66 does not apply, and that include all relevant information, will generally receive a response within five business days.

2.3. Financial businesses – application for approval

A request for approval to use a restricted word or expression in relation to a financial business should be directed to APRA at one of the contact points provided in Chapter 4.

In determining whether to grant approval, APRA will consider the particulars of the application and the policy intent of the restriction: to limit the use of restricted words and expressions by financial businesses that are not ADIs to very rare and unusual circumstances. Consequently, APRA very rarely grants approval for a financial business that is not an ADI to use a restricted word or expression.

If approval is granted by APRA, it will usually be subject to conditions. Conditions operate to limit the use of the restricted word or expression, having regard to the very rare and unusual circumstances that formed the basis of the approval granted.

Information to be provided in the application

Information provided in support of an application for approval should include:

- full details of the applicant (including an individual, partnership or corporation) that carries on or proposes to carry on the financial business in relation to which the restricted word or expression is intended to be used, including full name, address and contact details;
- the nature of the financial business or proposed financial business;
- the restricted words or expressions proposed to be used and the context of use; and

⁴ APRA's consent is required under Part 5 of Schedule 6 to the *Corporations Regulations 2001* (for company names) and *Business Names Registration (Availability of Names) Determination 2015* (for business names).

- demonstration that the applicant's proposed use of the restricted words or expressions includes rare and unusual circumstances that would warrant it being granted a consent or exemption to use the restricted words or expressions, given the policy intent of the restriction.

APRA will contact applicants to discuss their application, including estimated processing time. APRA may also seek additional information where required.

In accordance with the requirements of the Banking Act, APRA will notify ASIC of new, varied and revoked consents.

Chapter 3 - Guidance for ADIs and applicants for authorisation

3.1. Authorised deposit-taking institutions

There is no restriction on an ADI using the terms:

- 'bank', 'banker' and 'banking' except where APRA has made a determination under section 66AA of the Banking Act; and
- 'authorised deposit-taking institution' and 'ADI'.

APRA has granted a class consent under section 66 of the Banking Act for ADIs operating as credit unions to use the restricted expressions 'credit union', 'credit society' and 'credit co-operative', and ADIs operating as building societies to use the restricted expression 'building society'.

APRA can make a determination under section 66AA that an ADI, or class of ADIs, is not permitted to use the word 'bank'. Such a determination may be made where the ADI does not have the usual characteristics of a bank, such as a Purchased Payment Facility. If APRA is considering making such a determination, it will consult affected parties prior to a decision being made.

3.2. Applications for authorisation to conduct banking business

When APRA authorises a company to conduct banking business under section 9 of the Banking Act, the company becomes eligible to use the restricted words set out in section 3.1 above.

A company that has made an application for authorisation as an ADI may make limited use of restricted words or expressions provided that it complies with sections 66 and 66A of the Banking Act, and the use is not misleading. Persons intending to make an application should contact APRA to discuss how the restrictions apply. Further information is available in the [Restricted ADI Framework](#) and in the [Guidelines for authorisation of ADIs](#).

Chapter 4 - Contacts

For further information contact APRA on 1300 558 849.

Applications and requests for confirmation that section 66 or 66A does not apply should be lodged with APRA at:

info@apra.gov.au

GPO Box 9836, Sydney, NSW 2001



APRA