



19 September 2013

**To all Authorised Deposit-taking Institutions
Operation of Foreign Banks in Australia**

On 14 April 2011, APRA issued a letter to all authorised deposit-taking institutions (ADIs) outlining its approach to foreign banks operating in Australia that are not licensed by APRA as ADIs. APRA has subsequently received a number of enquiries and requests for exemption from the application of section 66 of the *Banking Act 1959*, which restricts the use of words such as 'bank', to foreign banks conducting business in Australia. APRA is therefore issuing this further guidance to clarify its position.

As noted in the April 2011 letter, APRA has generally taken the position that foreign banks soliciting and operating an active business in Australia should be subject to Australian prudential regulation and supervision, regardless of where the business is booked. To clarify the conditions set out in that letter, APRA would not object to a foreign bank (not licensed by APRA as an ADI) conducting business with Australian counterparties from its offshore offices provided:

- the foreign bank does not maintain an office or permanent staff in Australia, including staff employed by an entity within the banking group that conducts non-banking business on its behalf in Australia;
- the foreign bank does not solicit business from retail customers in Australia;
- all business contracts and arrangements are clearly transacted and booked offshore;
- the foreign bank does not engage in advertising or allow bank staff to physically solicit business in Australia; and
- where offshore staff of the foreign bank meet with clients and potential clients in Australia, it is for the limited purpose of arranging or executing documentation in relation to the business of those clients.

Provided a foreign bank conducts its business with Australian counterparties under these conditions, APRA does not consider that the foreign bank will be in breach of section 66 of the *Banking Act 1959* if it uses a restricted word such as 'bank', including in its corporate name, when dealing with its clients. APRA is also of the view that the foreign bank will not breach section 66 of the *Banking Act 1959* where it uses restricted words such as 'bank' to register a security interest over property in Australia, including on the Personal Property Securities Register established pursuant to the *Personal Property Securities Act 2009*.

APRA will not, however, provide exemptions from section 66 for unlicensed foreign banks wishing to use a restricted word such as 'bank' to register as a foreign company under the *Corporations Act 2001*. APRA will only provide such an exemption for the limited activities of a representative office.

If you have any questions on these matters, please contact your APRA Responsible Supervisor or for non-APRA supervised entities, APRA's General Manager, Enforcement.

Yours sincerely

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