

# Applications for consent or exemption

## Applications under section 66

27. The purpose of the restriction on the assumption or use of the restricted words by non-ADIs is to ensure potential customers are not misled into believing that such institutions have the same level of capital adequacy, depositor-priority and other prudential requirements that apply to ADIs. The following paragraphs address the issues to be considered in making an application for consent to use a restricted word or for an exemption from the application of ss. 66 and 66A under section 11 of the Act.

## Threshold question

28. The threshold question is whether the business is a 'financial business'. If the activity is not a financial business then APRA's consent to use the restricted words is not required.

## Answering the threshold question

29. The answer to the threshold question can be 'yes' only if the answer to one of the following four questions is 'yes'. These questions are:

- (i) Does the business consist of the provision of 'financial services'?
- (ii) Does the business include the provision of 'financial services'?
- (iii) Does the business relate, in whole, to the provision of 'financial services'?
- (iv) Does the business relate, in part, to the provision of 'financial services'?

30. A business which does not, itself, consist of or include the provision of financial services but which relates, even in part, to the provision of financial services, qualifies as a 'financial business' for the purposes of this test.

## Meaning of the expression 'financial services'

31. It is not possible to come up with an exhaustive and prescriptive definition of the expression 'financial services'. It has not been defined in the legislation.

32. It is APRA's view that the expression includes:

- (i) the provision of, or the supply of a service in relation to, financial products such as facilities for deposit-taking in the ordinary course of banking business, securities, futures contracts, contracts of insurance (including life insurance), retirement savings accounts and superannuation interests;
- (ii) the investment activities of superannuation funds; and
- (iii) 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. It does not include transactions (such as the purchase or sale of goods or services for a monetary consideration) in which finance (in the form of payment of a price) may be involved but cannot properly be seen as constituting the subject of the transaction.

33. The expression would seem to include investment business, insurance business and banking business.

## Meaning of the expression 'financial business'

34. As has been said, if the answer to any of the four questions specified in paragraph 29 is 'yes', the business is a 'financial business' for the purposes of s. 66(1).

## APRA Consent

35. If the answer to the threshold question is 'yes', a further question arises as to whether APRA should grant consent to use the restricted word(s) or expression and, if so, whether it should be conditional.

36. A decision as to whether APRA should grant consent will be made on the facts of the particular case.

37. Consent would only be granted if APRA is reasonably satisfied that to grant consent would not defeat the purpose of the restriction, namely, the protection of the public.

38. In some cases, APRA could be so satisfied if appropriate conditions were imposed. In other cases, the imposition of conditions would not avoid the confusion referred to in paragraph 27 above and, therefore, only in an extraordinary case could approval be given (if at all).

### Information in support of application

39. It is essential that the information provided in support of an application for consent specifies the 'person', or other legal entity, such as a corporation, who proposes to carry on the business in relation to which the restricted word is proposed to be used.

40. It is also essential that the application identifies not only the word (or words) but also the context in which it (or they) will be used. For example, a person may propose to use only the restricted word 'banking' (not either of the restricted words 'bank' and 'banker') and only in a specified internet domain name. Consent will not be granted in terms wider than those required for the specified purpose.

41. It is crucial that adequate, reliable information is provided not only about the nature of the business but also about the precise nature of the transactions entered into in the course of carrying on the business and the kinds of persons who are or are proposed to be involved in them. For example, the transactions may involve members of the general public or they may involve only persons with specialist knowledge and expertise in financial matters.

42. In some cases it will be necessary for APRA to seek further information. Consent would not be granted where the information provided is considered to be inadequate or unreliable, for example, where information is provided only about the nature of the business or inconsistent information is provided about the precise nature of the transactions entered into in the course of carrying on the business.

### Submissions in support of application

43. An application for consent should also contain submissions as to why a grant of consent would not defeat the purpose of the restriction. In particular, such submissions should demonstrate why unconditional consent or the imposition of specified conditions would be appropriate.

44. Information to be provided should include a:

- copy of business/company registration or application for registration (if applicable);
- summary of the nature of the business applying to use the restricted word;
- description of how the restricted word will be used, for example, domain name; and
- summary of the nature of the business to be carried on with the restricted word.

Additional information may be sought by APRA if the information provided does not enable a decision to be made.

45. Applications should be lodged with APRA via GPO Box 9836, Sydney, NSW 2001, fax number (02) 9210 3300, or GPO Box 9836, Melbourne, VIC 3000, fax number (03) 9663 5085.

46. An initial application can be via fax or post, however APRA will not advise the applicant of its decision until the original documents are received.

### Application for exemption order under section 11

47. Under s. 11 of the Banking Act, APRA may determine that provisions, including ss. 66 and 66A, do not apply to a particular person or class of persons. As there is no provision in s. 66A for APRA to grant consent for the use of the expression 'authorised deposit-taking institution' or 'ADI' by a non-authorised entity, an application to use these words must be made under s. 11. An application should include information and submissions similar to those required in support of an application for consent (paragraphs 39 to 46 above).