



Banking (prudential standard) determination No. A2 of 2023

Avenue Bank Limited – restricted ADI prudential requirements

Banking Act 1959

To: Avenue Bank Limited ABN 24 628 073 085 (the restricted ADI)
Avenue Hold Limited ABN 50 628 071 198 (the NOHC)

I, Renée Roberts, a delegate of APRA:

- (a) under subsection 11AF(3) of the *Banking Act 1959* (the Act), REVOKE Banking (prudential standard) determination No. A2 of 2021 including individual prudential standard *Avenue Bank Limited – restricted ADI prudential requirements* made under that determination; and
- (b) under paragraph 11AF(1)(e) of the Act, DETERMINE individual prudential standard *Avenue Bank Limited – restricted ADI prudential requirements* in the form set out in the schedule, which applies to the restricted ADI and the NOHC.

This instrument commences on the day it is made.

Dated: 14 August 2023

Renée Roberts
Executive Director
Banking Division

Interpretation

In this instrument:

APRA means the Australian Prudential Regulation Authority.

prudential standard has the meaning given in subsection 5(1) of the Act.

You may request APRA reconsider the decision in accordance with subsection 51B(1) of the Act. The request for reconsideration must be made in writing, must state the reasons for the request, and must be given to APRA within 21 days after the day on which you first received notice of this decision, or within such further period as APRA allows. If you are dissatisfied with the outcome of APRA's reconsideration of the decision, you may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of the reconsidered decision. The address where written notice may be given to APRA is Level 12, 1 Martin Place, Sydney NSW 2000.

Schedule – individual prudential standard

Avenue Bank Limited – restricted ADI prudential requirements comprises the document commencing on the following page.



Individual Prudential Standard

Avenue Bank Limited – restricted ADI prudential requirements

Objectives of this Prudential Standard

This Prudential Standard sets out the prudential requirements that apply to Avenue Bank Limited and Avenue Hold Limited whilst Avenue Bank Limited is operating as a restricted ADI.

Application

1. This Prudential Standard applies to Avenue Bank Limited (the ADI) and Avenue Hold Limited during the period that the ADI operates as a restricted ADI.
2. A reference to the ADI in this Prudential Standard, unless otherwise indicated, is a reference to:
 - (a) the ADI on a **Level 1** basis; and
 - (b) a group of which the ADI is a member on a **Level 2** basis.
3. If the ADI is:
 - (a) the holding company for a group of bodies corporate, the ADI must ensure that the requirements in this Prudential Standard are met on a Level 2 basis, where applicable; or
 - (b) a **subsidiary** of an authorised **non-operating holding company (authorised NOHC)**, the authorised NOHC must ensure that the requirements in this Prudential Standard are met on a Level 2 basis, where applicable.

Interpretation

4. Terms that are defined in *Prudential Standard APS 001 Definitions* (APS 001) appear in bold the first time they are used in this Prudential Standard.
5. Where this Prudential Standard provides for APRA to exercise a power or discretion, this power or discretion is to be exercised in writing. In this Prudential Standard, unless the contrary intention appears, a reference to an Act, Regulations or Prudential Standard

is a reference to the Act, Regulations or Prudential Standard as in force from time to time.

6. To the extent that there is any inconsistency between any provision in this Prudential Standard and any provision of another Prudential Standard in its application to the ADI, the provision in this Prudential Standard will prevail.

Definitions

7. The following definitions are used in this Prudential Standard:
 - (a) *adjusted assets* means the sum of all assets, within the meaning given in the **Australian Accounting Standards**, minus an amount equal to the value of regulatory adjustments that the ADI is required to make to its capital under paragraph 13 of this Prudential Standard;
 - (b) *adjusted Common Equity Tier 1 Capital* means Common Equity Tier 1 Capital determined in accordance with *Prudential Standard APS 111 Capital Adequacy: Measurement of Capital* (APS 111) plus ordinary shares of the ADI;
 - (c) *Banking Authority* means authority under subsection 9(3) of the **Banking Act** to carry on banking business in Australia;
 - (d) *body regulated by APRA* has the meaning given in subsection 3(2) of the *Australian Prudential Regulation Authority Act 1998*;
 - (e) *FCS* means the Financial Claims Scheme established under Division 2AA of Part II of the Banking Act;
 - (f) *liabilities* means, for the purpose of this Prudential Standard, the total on-balance sheet liabilities and irrevocable commitments, except where approved for a prudential purpose by APRA;
 - (g) *protected account* has the meaning given in section 5 of the Banking Act;
 - (h) *resolution reserve* means reserve to cover potential APRA costs of resolving the ADI which may, as a last resort, include administration of the FCS if activated by the Australian Government; and
 - (i) *restricted ADI* means a body corporate granted authority under subsection 9(3) of the Banking Act to carry on banking business in Australia for a limited time.

Applicable Prudential Standards

8. The ADI must comply with the following Prudential Standards, which apply in full to the ADI:
 - (a) APS 001;
 - (b) *Prudential Standard APS 310 Audit and Related Matters*;
 - (c) *Prudential Standard CPS 220 Risk Management*; and
 - (d) *Prudential Standard CPS 520 Fit and Proper*.

9. Prior to accepting deposits, the ADI must comply with *Prudential Standard APS 910 Financial Claims Scheme*, which applies in full to the ADI.
10. The ADI must comply with the following Prudential Standards, which apply in part to the ADI, to the extent provided in this Prudential Standard:
 - (a) APS 111; and
 - (b) *Prudential Standard CPS 510 Governance (CPS 510)*.
11. For the avoidance of doubt, all other Prudential Standards determined under section 11AF of the Banking Act do not apply to the ADI.

Minimum capital adequacy requirements

12. The ADI must, as a minimum, have at all times adjusted Common Equity Tier 1 Capital equal to the greater of:
 - (a) \$3 million plus the resolution reserve, which is \$1 million unless otherwise determined by APRA; and
 - (b) 20 per cent of adjusted assets of the ADI.

Measurement of Capital

13. The ADI must make the regulatory adjustments to its capital in accordance with Attachment D to APS 111. All regulatory adjustments required to be made to Common Equity Tier 1 Capital under Attachment D to APS 111 must be made to adjusted Common Equity Tier 1 Capital.

Responsibility for capital adequacy

14. The Board of Directors (**Board**) of the ADI must **ensure** that the ADI maintains an appropriate level of capital commensurate with the level and extent of risk to which the ADI is exposed from its activities. To this end, the ADI must:
 - (a) have adequate systems and procedures in place to identify, measure, monitor and manage the risks arising from its activities to ensure that capital is held at a level consistent with the ADI's risk profile; and
 - (b) maintain and implement a capital management plan, consistent with the overall business plan, for managing its capital levels on an ongoing basis. The plan must set out:
 - (i) the ADI's strategy for maintaining capital resources over time, for example, by outlining its capital needs for supporting the degree of risks involved in its business, how the required level of capital is to be met, as well as the means available for sourcing additional capital where required; and
 - (ii) actions and procedures for monitoring the ADI's compliance with minimum capital adequacy requirements defined in paragraph 12 of this Prudential Standard, including the setting of trigger ratios to alert management of potential breaches to the minimum capital required by APRA.

Liquidity

15. The ADI must hold at all times Minimum Liquidity Holdings (MLH) liquid assets equal to the greater of:
 - (a) 20 per cent of total liabilities of the ADI; and
 - (b) the value of all protected accounts held with the ADI plus an amount equal to the resolution reserve.
16. MLH liquid assets must be free from encumbrances. Eligible assets include:
 - (a) notes and coin and settlement funds;
 - (b) Commonwealth Government and semi-government securities;
 - (c) debt securities guaranteed by the Australian Government, or foreign sovereign governments;
 - (d) debt securities issued by supranationals and foreign governments;
 - (e) bank bills, certificates of deposits (CDs) and debt securities issued by ADIs;
 - (f) deposits (at call and any other deposits readily convertible into cash within two **business days**) held with other ADIs net of placements by other ADIs; and
 - (g) any other securities approved by APRA.
17. All debt securities must be eligible for repurchase agreement with the Reserve Bank of Australia and must not be subordinated.

Responsibility for liquidity management

18. The Board of the ADI must ensure that the ADI maintains an appropriate level of liquidity to ensure it is at all times able to meet the liquidity requirements of this Prudential Standard. To this end, the ADI must:
 - (a) have adequate systems and procedures in place to identify, measure, monitor and manage its activities to ensure that liquidity is held at a level consistent with the ADI's risk profile; and
 - (b) maintain and implement a liquidity management plan, consistent with the overall business plan, for managing its liquidity levels on an ongoing basis. The plan must:
 - (i) set out the ADI's strategy for maintaining liquidity resources over time, for example, by outlining its liquidity needs, how the required level of liquid assets will be met, as well as the means available for sourcing additional liquidity where required;
 - (ii) set out actions and procedures for monitoring the ADI's compliance with minimum liquidity requirements, including the setting of trigger ratios to alert management of potential breaches to the minimum liquidity requirements of this standard; and

- (iii) address a retail deposit run and include measures to repay retail depositors as soon as practicable. The retail run contingency plan must not rely upon closing distribution channels to retail depositors. The retail run contingency plan must seek to ensure that retail depositors wishing to retrieve their deposits may do so as quickly and as conveniently as is practicable in the circumstances, and within the contractual terms and conditions applicable to the relevant deposit products.

Governance

19. CPS 510 applies in full to the ADI, subject to the following:

- (a) the ADI is not required to have the following committees:
 - (i) Board Remuneration Committee;
 - (ii) Board Audit Committee; and
 - (iii) Board Risk Committee.

The responsibilities of these committees as described in CPS 510 will be the responsibilities of the Board non-executive directors;

- (b) the Board must have a minimum of two independent directors at all times;
- (c) at least one director present and eligible to vote at all Board meetings must be an independent director;
- (d) paragraphs 34 – 36, 44 and 45 of CPS 510 do not apply; and
- (e) the internal auditor must have a reporting line and unfettered access to the independent directors.

Strategy to ADI licence

- 20. The ADI must maintain as part of its **risk management framework** a documented plan for the institution that sets out how it will meet the full **prudential requirements** within the required timeframe set by APRA (strategy to ADI licence).
- 21. The strategy to ADI licence must be tailored to the ADI's strategic objectives and business plan. It must:
 - (a) detail all the necessary actions that need to be completed in order for the ADI to meet the ADI prudential requirements;
 - (b) show timings and progress against key actions;
 - (c) detail key dependencies; and
 - (d) be documented in such a way that both APRA and the ADI can track the ADI's progress against the strategy on an on-going basis.

Exit Plan

22. The ADI must maintain as part of its risk management framework a written plan for the ADI that sets out its approach for returning funds to depositors and surrendering its Banking Authority in the event it must exit the banking industry (exit plan).
23. The exit plan should enable the ADI to conduct an orderly exit in a timely manner. It must be tailored to the ADI's strategic objectives, business plan and material risks and must include:
 - (a) a robust framework of qualitative and quantitative triggers;
 - (b) a menu of credible options for exit;
 - (c) governance, escalation, implementation and monitoring procedures; and
 - (d) a communication strategy.

Operational Risk

24. The ADI must have in place effective management information systems and monitoring mechanisms to assist with early detection and correction of deficiencies in procedures for managing **operational risk**.

Business Continuity Management

25. APRA expects the ADI to meet customer obligations in the event of a disruption. As a minimum, the ADI must demonstrate it has considered its exposure to, and has developed response plans for, plausible disruption scenarios to its business operations which are commensurate with the nature, size and complexity of its operations. This may be incorporated in scenario analysis or exit plans.
26. The ADI must notify APRA as soon as possible and no later than 24 hours after it experiences a major disruption that has the potential to have a material impact on its risk profile, or affect its financial soundness. The ADI must explain to APRA the nature of the disruption, the action being taken, the likely effect and the timeframe for returning to normal operations. The ADI must notify APRA when normal operations resume.

Outsourcing

27. The ADI must be able to demonstrate to APRA that any outsourcing arrangements for material business activities that impact on its strategic plans during the restricted phase meet the requirements of paragraphs 26 to 31 and 34 to 36, of *Prudential Standard CPS 231 Outsourcing*.
28. The ADI must notify APRA as soon as possible after entering into an outsourcing agreement for a material business activity, and in any event no later than 20 business days after execution of the outsourcing agreement. APRA may request information where it considers it necessary in order to assess the impact of the outsourcing arrangement on the institution's risk profile.
29. The ADI must consult with APRA prior to entering into any **offshoring** agreement involving a material business activity.
30. The ADI must maintain sufficient and appropriate resources to manage and monitor each outsourcing relationship at all times. The type and extent of resources required will

depend on the materiality of the outsourced business activity. At a minimum, monitoring must include:

- (a) maintaining appropriate levels of regular contact with the service provider. This will range from daily operational contact to senior management involvement; and
 - (b) a process for regular monitoring of performance under the agreement, including meeting criteria concerning service levels.
31. The ADI must advise APRA of any significant problems that have the potential to materially affect the outsourcing arrangement and, as a consequence, materially affect the business operations, profitability or reputation of the ADI.
32. Where an outsourcing agreement is terminated, the ADI must notify APRA as soon as practicable and provide a statement about the transition arrangements and future strategies for carrying out the outsourced material business activity.

Associations with related entities

33. For the purposes of this Prudential Standard, all entities controlled (whether directly or indirectly) by:
- (a) the ADI; or
 - (b) the ultimate domestic parent of the ADI (including the parent entity itself),
- are a 'related entity' of the ADI. Where appropriate, APRA may require the ADI to treat other entities (and their subsidiaries) as 'related entities' of the ADI.
34. The ADI must ensure that its exposures to related entities comply with the following limits:
- (a) exposure to an individual related entity that is a body regulated by APRA – 25 per cent of the amount of adjusted Common Equity Tier 1 Capital held by the ADI on a Level 1 basis;
 - (b) exposure to an individual related entity that is not a body regulated by APRA – 15 per cent of the amount of adjusted Common Equity Tier 1 Capital held by the ADI on a Level 1 basis; and
 - (c) aggregate exposure to all related entities – 35 per cent of the amount of adjusted Common Equity Tier 1 Capital held by the ADI on a Level 1 basis.
35. The ADI may provide support to related entities (and vice-versa) provided such support accords with the prudential requirements set out in paragraphs 7 to 12 of *Prudential Standard APS 222 Associations with related entities* in relation to the policies governing an ADI's dealings with related entities. The ADI must not give the impression of support unless there are formal legal arrangements in place providing for such support.

Large Exposures

36. A large exposure is an exposure to a counterparty or a group of related counterparties which is greater than or equal to 10 per cent of the ADI's adjusted Common Equity Tier 1 Capital.

37. The terms 'counterparty' and 'group of related counterparties' have the meaning given in *Prudential Standard APS 221 Large Exposures*. The aggregate exposure of the ADI to a counterparty or a group of related counterparties is subject to the following limits:
- (a) external parties (other than governments, central banks and ADIs or equivalent overseas deposit-taking institutions) unrelated to the ADI – 25 per cent of adjusted Common Equity Tier 1 Capital;
 - (b) unrelated ADI (or equivalent overseas deposit-taking institution) and its subsidiaries – 50 per cent of Common Equity Tier 1 Capital, with aggregate exposure to non-deposit-taking subsidiaries capped at 25 per cent of adjusted Common Equity Tier 1 Capital; and
 - (c) foreign parents and their subsidiaries – 50 per cent of Common Equity Tier 1 Capital, with aggregate exposure to non-deposit-taking subsidiaries capped at 25 per cent of adjusted Common Equity Tier 1 Capital.
38. Although certain types of exposure (e.g. settlement risk, exposure secured by eligible collateral) and counterparties (governments and central banks) are excluded from the above prescribed limits, these exposures are not risk-free. The ADI must have adequate procedures and controls in place (e.g. by way of internal limits) to monitor these exposures.
39. The ADI must notify APRA within 1 business day of committing to any exposures to non-government, non-ADI counterparties in excess of 10 per cent of its adjusted Common Equity Tier 1 Capital. The ADI must provide details of the exposure and must be able to demonstrate to APRA that the exposure is not likely to expose the ADI to excessive risk.
40. The ADI must obtain APRA's prior approval for any proposed exposures in excess of the prescribed limits set out in paragraph 37 of this Prudential Standard. Such approval will only be granted on an exceptions basis. The ADI must be able to satisfy APRA that the proposed exposure(s) is not likely to expose the ADI to excessive risk. APRA may impose a higher minimum adjusted Common Equity Tier 1 Capital on the ADI at Level 1 and/or Level 2 to compensate for the additional risk that may be associated with the proposed exposures.

Disclosure requirements

41. The ADI must include a disclosure on all promotional and marketing material, whether in paper form, electronic form or website or social media based content. Unless otherwise approved by APRA, the disclosure must:
- (a) prominently display a statement that the ADI is operating under a time limited and restricted Banking Authority; and
 - (b) provide details of where further information is available.
42. The further information referred to in paragraph 41(b) must include at a minimum:
- (a) an explanation in plain language of the restrictions on the ADI's Banking Authority, and how the restrictions impact customers;
 - (b) an explanation in plain language of the requirements of the simpler prudential standards;

- (c) the date by which the ADI must meet the prudential requirements in full or surrender its Banking Authority; and
 - (d) any other information in regards to the ADI's Banking Authority that might reasonably be expected to have a material influence on a customer's decision to acquire a product from the ADI.
43. Prior to entering into a customer relationship, the ADI must provide the customer with a written disclosure statement (the statement).
44. The statement must be prominently displayed and written in plain language and must disclose at a minimum, the following matters:
- (a) Avenue Bank Limited has been granted a restricted Banking Authority from the Australian Prudential Regulation Authority (APRA). Under this authority Avenue Bank Limited has restrictions on the amount of deposits it can take and has simpler prudential requirements while it builds its resources and capabilities;
 - (b) Avenue Bank Limited has until 7 March 2024 to meet APRA's full prudential requirements or it must exit the banking industry; and
 - (c) arrangements have been put in place to protect customers in the event Avenue Bank Limited exits the banking industry. This includes:
 - (i) Avenue Bank Limited being required by APRA to contact customers to advise how they are impacted, e.g. deposits may be returned or transferred to another bank;
 - (ii) the *Banking Act 1959* provisions for the protection of depositors apply to Avenue Bank Limited; and
 - (iii) Avenue Bank Limited is covered by the Australian Government Financial Claims Scheme (FCS). The FCS applies only to protected accounts. It is important customers check the terms and conditions of their specific product to determine if it is protected under the FCS.

Notification requirements

45. The ADI must immediately inform APRA, in accordance with section 62A of the Banking Act, of:
- (a) any breach of the minimum capital adequacy requirements set under paragraph 12 of this Prudential Standard and any potential breach of these requirements (e.g. breaches of trigger ratios set under paragraph 15(b)(ii) of this Prudential Standard), including remedial actions taken/planned to deal with the problem;
 - (b) any breach of its minimum liquidity holdings, or concerns over the adequacy of its liquidity holdings;
 - (c) any concerns that the ADI has that a large exposure or risk concentration may have the potential to impact materially upon its capital adequacy, along with proposed measures to address these concerns; or
 - (d) any breach or potential breach of a limit specified in this Prudential Standard.

Adjustments and exclusions

46. APRA may adjust or exclude a specific prudential requirement in this Prudential Standard in relation to the ADI or its authorised NOHC.¹

¹ Refer to subsection 11AF(2) of the Banking Act.