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Banking (authorisation criteria) determination No. [number] of [year] – locally-incorporated ADI

Banking Act 1959

I, [Delegate name], a delegate of APRA, under subsection 9(2A) of the *Banking Act 1959* (the Act), SET criteria for the granting of an authority to carry on banking business in Australia, in the form set out in the schedule.

This instrument commences on the day it is registered on the Federal Register of Legislation.

Dated: [Approval date]

[Delegate name and title]

Interpretation

In this instrument:

APRA means the Australian Prudential Regulation Authority.

banking business has the meaning given in subsection 5(1) of the Act.

Schedule – criteria for the granting of an authority to carry on banking business in Australia

Introduction

1. These criteria are made under subsection 9(2A) of the *Banking Act 1959* (the Act). They apply to a body corporate which applies for an authority to carry on banking business in Australia under subsection 9(2) of the Act as a locally-incorporated ADI.

Note **Matters to consider before lodging a formal application**

Applicants are encouraged to discuss a proposed application with APRA and to familiarise themselves with APRA's licensing process guidelines before lodging a formal application.

Applicants should also consider the need to raise their application with, or provide information in relation to the proposed application to, other agencies, such as the ATO, ASIC, the ACCC and the FIRB.

To avoid delays in processing their application, early in their application planning applicants should consider whether any other licences, consents, approvals (including those under the Act), trademarks, business names and any other thing relating to the application have been granted.

Authorisation criteria for a locally-incorporated ADI

2. A body corporate which applies for authority to carry on banking business in Australia as a locally-incorporated ADI must demonstrate that it:
 - (a) is structured and operates in a manner that APRA can effectively supervise. At a minimum, this would include:
 - (i) dealing with APRA in an open, constructive and cooperative way;
 - (ii) providing complete and accurate information to APRA within specified timeframes;
 - (iii) reasonable assurance that the granting of the authority would not result in a breach of the *Financial Sector (Shareholdings) Act 1998* by any person;
 - (iv) a corporate group structure that does not hinder APRA's ability to exercise its powers and functions; and
 - (b) has sufficient financial and non-financial resources to prudently conduct banking business. At a minimum, this would include:
 - (i) a Common Equity Tier 1 Capital amount equal to the greater of:
 - (A) \$15 million; or
 - (B) the body corporate's forecast operational expenditure for the following nine months;
 - (ii) credible plans for at least the next 24 months following authorisation that demonstrate how the body corporate will maintain Common Equity Tier 1 Capital at least equal to the greater of:
 - (A) \$10 million;

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- (B) the body corporate's forecast operational expenditure for the following six months, recalculated quarterly; or
 - (C) the percentage, as determined by APRA, of Risk-Weighted Assets calculated in accordance with *Prudential Standard APS 110 Capital Adequacy*;
including under stress scenarios;
 - (iii) liquid assets that meet minimum requirements under *Prudential Standard APS 210 Liquidity*;
 - (iv) credible plans that demonstrate how it will maintain, in the three years following authorisation, liquid assets that meet minimum requirements under *Prudential Standard APS 210 Liquidity*, including under stress scenarios;
 - (v) generating revenue through at least one financial product available to the general public;
 - (vi) operationally ready to accept deposits;
 - (vii) IT systems that are fit for purpose and have been tested and independently validated; and
- (c) has suitable skills and experience to prudently conduct banking business. At a minimum, this would include:
- (i) responsible persons that are fit and proper, with accountabilities clearly defined;
 - (ii) a Board of at least five directors, with the majority being independent and ordinarily resident in Australia;
 - (iii) a Board with necessary skills and experience, collectively, to prudently oversee banking business operations;
 - (iv) Accountable Persons under the *Financial Accountability Regime Act 2023* that have the necessary skills and experience to discharge their accountabilities and deliver the business plan; and
- (d) has a risk management framework to prudently conduct banking business. At a minimum, this would include:
- (i) having a risk management framework that is proportionate for the strategy, business mix, risk profile, size and complexity of the body corporate's business model;
 - (ii) having controls in place for key operational risks, including risks related to critical operations and the use of material service providers; and
- (e) has credible plans for effectively responding to a stress event that threatens its viability. At a minimum, this would include:
- (i) recovery options that would be relevant and plausible during stress;
 - (ii) at least one credible option for an orderly and solvent exit from banking business; and
 - (iii) being operationally ready for the activation of the Financial Claims Scheme.

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Timeframe to demonstrate meeting the authorisation criteria

3. A locally-incorporated body corporate that applies for an authority under subsection 9(2) of the Act must satisfy the applicable criteria in paragraph 2 within the following timeframes:
 - (a) if the application was submitted before the commencement of this instrument – within 12 months from the date of the commencement of this instrument; and
 - (b) in all other cases – within 12 months from the date of lodging the application to APRA.
4. In exceptional circumstances, APRA may extend the timeframe for an entity to satisfy the requirement specified in paragraph 3 by informing the applicant in writing.

Interpretation

In this schedule:

ACCC means the Australian Competition and Consumer Commission established under section 6A of the *Competition and Consumer Act 2010*.

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

ASIC has the meaning given in the *Australian Securities and Investments Commission Act 2001*, and is the Australian Securities and Investments Commission established under earlier legislation.

ATO means the branch of the Commonwealth known as the Australian Taxation Office.

Common Equity Tier 1 Capital has the meaning given in *Prudential Standard APS 111 Capital Adequacy: Measurement of Capital*.

Financial Claims Scheme means the scheme provided under Division 2AA of Part II of the Act.

FIRB means the non-statutory Commonwealth body known as the Foreign Investment Review Board established to advise the Treasurer on foreign investment matters.

foreign ADI has the meaning given in subsection 5(1) of the Act.

locally-incorporated ADI means an ADI that is not:

- (a) a foreign ADI; or
- (b) an ADI that carries on banking business that consists only of the provision of a purchased payment facility.

Unless a contrary intention appears, a reference in this schedule to an Act, Prudential Standard or Australian Accounting Standard is a reference to the instrument as in force from time to time.