

Representative Offices of Foreign Banks

Prudential Statement J3

Introduction

1. A foreign bank wishing to establish a representative office in Australia must obtain the written consent of the Governor or a Deputy Governor of the Reserve Bank¹. Consent is also required for a foreign bank to use the word "bank" or its equivalent as part of the bank's corporate name in connection with maintaining a representative office.
2. Consent to operate a representative office, and to use the word "bank", may be granted subject to conditions, and these may be varied, revoked, or added to at any time.
3. A foreign bank wishing to establish a representative office in Australia is required to meet minimum entry standards, and comply with certain operating conditions, set by the Reserve Bank. Failure to comply with the operating conditions may lead to revocation of the consent to maintain a representative office in Australia.
4. Foreign banks may also apply to establish locally incorporated banking subsidiaries in Australia (refer Prudential Statement J1 - "Locally Incorporated Banks") or apply to operate through branches (refer Prudential Statement J2 - "Foreign Bank Branches").

Entry Criteria

5. An applicant wishing to establish a representative office in Australia will need to satisfy the Reserve Bank that:
 - i. it is recognised as a bank under the laws of its home country;
 - ii. it is of substance and good repute;
 - iii. it is subject to adequate standards of prudential supervision in its home country; and

¹ The Treasurer has delegated his powers under the Banking Act relating to representative offices to persons occupying the office of Governor or Deputy Governor of the Reserve Bank.

- iv. it has received approval from its home country supervisor to establish a representative office in Australia.

Information to support an application

6. In order to demonstrate that it meets the above criteria, an applicant will be required to submit the following information to the Reserve Bank:
 - i. evidence of its status as a bank under the laws of its home country (ie a copy of its banking licence or authority);
 - ii. a copy of its most recent annual report (including audited accounts) and any subsequent public financial statements (in English);
 - iii. names of directors and substantial shareholders (direct and indirect), where these are not disclosed in the annual report;
 - iv. a brief history of the applicant, including details of its main activities;
 - v. a description of the proposed functions of the representative office and an indication of the number of personnel to be assigned to the office;
 - vi. the name of the proposed Chief Representative and the address and contact numbers of the proposed office (if not known at the time of the application, to be provided as soon as possible after authority is given by the Reserve Bank for the representative office to be established);
 - vii. the name and position of the officer in the applicant's Head Office to whom the chief representative will report and an outline of how the operations of the representative office are to be monitored, to ensure that the conditions attaching to the consent to maintain the office are observed;
 - viii. details of equity interests held by the applicant (or its ultimate parent) in Australian financial enterprises, and an outline of the nature of the business carried on by those enterprises;
 - ix. written confirmation from its home country supervisor (and where the applicant is part of a group of companies, from the supervisor in the country where the group conducts the bulk of its banking activities) that:
 - it does not object to the application;
 - the applicant is of good repute and satisfies all prudential requirements; and

- the applicant's operations are supervised on a consolidated basis consistent with internationally agreed standards;
 - x. whether the applicant has ever had an application to establish a presence in another country rejected or had an approval to conduct a representative office or banking operation in another country suspended or revoked, and the reasons for that action; and
 - xi. a written undertaking that the applicant will at all times comply with the conditions relating to the operation of the representative office in Australia.
7. The Reserve Bank reserves the right to seek further information from applicants, and to contact other supervisory authorities about an applicant.

CONDITIONS ATTACHING TO THE OPERATIONS OF REPRESENTATIVE OFFICES

8. The following conditions attach to the operation of representative offices of foreign banks in Australia:
- i. The business of a representative office must be confined to the conduct of purely liaison activities. Examples include: conducting research into the Australian economy; liaising with Australian customers of the bank; the provision of factual information relating to the bank's products and services upon request; undertaking credit assessments and reports on Australian entities for the bank;
 - ii. The representative office must *not* conduct any form of banking business such as: soliciting deposits; receiving deposits (this includes allowing members of the public to deposit moneys into any account conducted with an authorised bank in Australia in the name of the representative office or the foreign bank, e.g. for remittance overseas); granting loans; drawing, accepting, endorsing or discounting bills of exchange; establishing letters of credit; dealing in or issuing securities; dealing in derivative products; buying or selling foreign exchange or executing any documentation for any of the foregoing purposes;
 - iii. The representative office must not engage directly in financial transactions (whether within Australia or overseas), except transactions which are necessary for and incidental to the maintenance of the office in Australia;
 - iv. The name of the foreign bank should be only used by the representative office in conjunction with the description "representative office". This includes on office signage, letterheads, advertising, business cards etc;

- v. The activities of the representative office must be kept separate from those of any financial enterprise operating in Australia. In particular, the representative may not also be an employee or director with day-to-day responsibilities of any financial enterprise operating in Australia, and the representative office must be distinctly located from the office of any other financial enterprise. Should a foreign bank with a representative office in Australia take an equity position in a financial institution operating in Australia, it should notify the Reserve Bank;
- vi. Any proposed closure or change in the location of a representative office, or change in the Chief Representative, must be advised to the Reserve Bank;
- vii. Each representative, on taking up duties, must provide to the Reserve Bank a written acknowledgement that he/she understands the conditions applicable to the operation of the representative office;
- viii. Each foreign bank with a representative office in Australia must provide to the Reserve Bank every two (2) years a statement confirming that the representative office is complying with the conditions attaching to its consent. This statement should be signed by the executive in the foreign bank's Head Office with responsibility for oversight of the Australian representative office, or by some other appropriate member of senior management;
- ix. Any change in the arrangements for the foreign bank's oversight of its representative office in Australia must be advised to the Reserve Bank;
- x. A foreign bank with a representative office in Australia must keep the Reserve Bank informed of any significant developments adversely affecting its financial soundness and/or reputation globally, and provide promptly to the Reserve Bank each year a copy of its published financial accounts (in English);
- xi. A foreign bank with a representative office in Australia must be registered as a foreign company under the Corporations Law of Australia and must provide the Reserve Bank with evidence that such registration has been effected as soon as possible after approval to open a representative office has been granted (this also requires notifying the Reserve Bank when renewing the registration);
- xii. A foreign bank with a representative office in Australia must comply with all applicable laws and must inform the Reserve Bank in writing of any breach or alleged breach of an applicable law and, in addition, must inform the Reserve Bank in writing of any event which results or might reasonably be expected to result in the cancellation or suspension of the bank's registration as a foreign company under the Corporations Law;

- xiii. The representative office must provide the Reserve Bank with whatever information it may request from time to time relating to the operations of the office;
 - xiv. A foreign bank should ensure that a nominated representative is generally present in Australia.
9. A foreign bank will need to present a case to establish representative offices in more than one location in Australia or to share a representative office with another foreign bank.

Applications to establish a representative office

- 10. Applications should be addressed to the Governor of the Reserve Bank and marked to the attention of Bank Supervision Department.
- 11. Applications for registration under the Corporations Law must be lodged with the Australian Securities Commission.