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Australia

BANKING & FINANCE

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Australia.

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AUSTRALIA
BANKING & FINANCE

1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

The Australian banking sector is regulated by two key regulators, being the Australian Prudential Regulation Authority (**APRA**), which is responsible for financial system stability and depositor protection and the Australian Securities and Investments Commission (**ASIC**), which is responsible for market conduct and consumer protection.

APRA is a statutory authority established for the primary purpose of the prudential supervision of financial institutions in Australia. The *Australian Prudential Regulation Authority Act 1998* (Cth) (**APRA Act**) sets out that APRA's core objective is maintaining the financial safety of institutions and the stability of the Australian financial system. APRA's core objective must be balanced against the objectives of efficiency, competition, contestability and competitive neutrality.

ASIC is the corporate, markets and financial services regulator and is responsible for market integrity and consumer protection across the financial system. ASIC enforces the law under the *Corporations Act 2001* (Cth) (**Corporations Act**), sets and enforces banking standards, and investigates and acts against misconduct in the banking sector as required by the *Australian Securitiesss and Investments Commission Act 2001* (Cth) (**ASIC Act**).

There is also a range of other regulators and government bodies which regulate and supervise the Australian banking sector. These include:

- Reserve Bank of Australia (**RBA**) – The RBA is Australia's central bank and is responsible for promoting overall financial system stability. The RBA does this by managing and providing liquidity to institutions, monitoring financial system risks and regulating the payments system.
- Federal Treasury – Federal Treasury is an executive arm of the Australian Government, which is responsible for advising the government on financial system stability issues and events and on the legislative and regulatory framework underpinning the financial system.
- Australian Competition and Consumer Commission (**ACCC**) – The ACCC is responsible for competition policy and monitors competition, fair trading and consumer protection (in areas other than financial services) in compliance with the *Competition and Consumer Act 2010* (Cth) (**CCA**). The ACCC and Federal Treasury play a key role in terms of the ownership and acquisitions of supervised financial institutions.
- Australian Transaction Reports and Analysis Centre (**AUSTRAC**) – AUSTRAC is Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit. AUSTRAC regulates designated services carried on by "reporting entities" (including authorized deposit-taking institutions).
- Australian Tax Office (**ATO**) – The ATO is the Australian Government's principal revenue collection agency.
- Foreign Investment Review Board (**FIRB**) – FIRB examines proposals by foreign persons to invest in Australia and makes recommendations to the Federal Treasurer on proposals, subject to the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) and the Federal Government's Foreign Investment Policy.
- Australian Securities Exchange (**ASX**) – The ASX regulates equities, derivatives and enterprise trading markets, and ensures compliance with disclosure and market awareness obligations.

Australian Financial Complaints Authority (**AFCA**) – AFCA is Australia's dispute resolution scheme for financial services. All financial service providers are required by

ASIC to be members of AFCA.

2. Which type of activities trigger the requirement of a banking licence?

An entity that wishes to conduct banking business in Australia must be authorised by APRA as an authorised deposit-taking institution (**ADI**) or otherwise be entitled to rely on an exemption from the requirement to be an ADI. Under the *Banking Act 1959* (Cth) (**Banking Act**), banking business means a business that consists of banking within the meaning of the Australian Constitution (ie, banking, other than state banking; also state banking extending beyond the limits of the state concerned, the incorporation of banks, and the issue of paper money) or a business whose activities consist of both taking money on deposit (otherwise than as part payment for identified goods or services) and making advances of money, and certain other financial activities such as holding stored value.

Under the *Payment Systems (Regulation) Act 1998* (Cth), a holder of stored value in connection with a purchased payment facility (**PPF**) must be authorised as an ADI (though usually such entities are only authorised to conduct limited banking business – see section 3). A purchased payment facility is a facility (other than cash) that can be purchased, is able to be used as a means of making payments up to the amount that is available for use under the conditions applicable to the facility and the payments are to be made by the provider of the facility or by a person acting under an arrangement with the provider (ie, not the user of the facility). The holder of stored value is the person making payments in relation to the PPF.

Under certain circumstances, a company may be required to apply for authorisation as a non-operating holding company (**NOHC**) of a group of companies that includes one or more ADIs. NOHCs do not carry on a business other than the business of ownership or control of other bodies corporate.

3. Does your regulatory regime know different licenses for different banking services?

There are a number of different ADI-related licences depending on the type of banking services provided and the corporate structure of the entity providing banking services.

Entities that carry on banking business generally apply for an ADI licence under one of the following three categories:

- **Australian ADI** for bodies corporate incorporated in Australia and carrying on banking business in Australia. This is known as the direct pathway and is generally recommended for businesses that have the existing resources and capabilities to immediately establish an ADI. The ADI authorisation permits the business to conduct its intended banking business from the grant of the licence but the applicant must demonstrate its ability to meet the full prudential framework and readiness to commence banking business. Before authorisation, an applicant for an ADI must achieve a limited launch of at least one income-generating asset product and be operationally ready to launch deposit products shortly after being authorised.
- **Foreign ADI** for foreign bodies corporate, which are authorised to carry banking business and provide services to wholesale clients in Australia by establishing an Australian branch. For further information, see section 9.
- **Locally-locally incorporated subsidiary ADI** for foreign bodies corporate, which are authorised to conduct banking business and provide services to wholesale and retail clients in Australia by establishing a locally-incorporated subsidiary.

For locally incorporated entities, APRA also offers a restricted pathway to becoming an ADI, known as a restricted ADI (**RADI**) licence. Becoming a RADI may be appealing to new entrants that do not have the resources and capabilities to establish an ADI and need time to develop these resources and capabilities. The restricted pathway allows entrants to conduct limited banking business as a RADI for a maximum of two years, before needing to meet the requirements of the full prudential framework and applying for an ADI licence. The initial conditions on a RADI licence are more restricted than those of a full ADI licence, reflecting the restricted range of activities permitted under the licence. This pathway can assist entrants in seeking the investment required to operationalise the business while progressing compliance with the full prudential framework and an ADI licence application. Entrants that cannot meet the requirements of an ADI are expected to exit banking business.

Generally, APRA will subject new ADIs and RADIs to greater prudential supervision than established ADIs in the initial years of being licenced. This includes APRA accounting for the heightened risk profile of new ADIs and RADIs by adopting adjusted capital requirements, contingency planning and deposit restrictions. For new ADIs, APRA will assess the sustainability and track record of the new ADI when determining whether the ADI is established and these adjustments are no longer necessary.

As well as ADI and RADI licences, APRA also issues limited ADI licences to holders of stored value in connection with PPFs, authorising them to undertake a limited range of banking activities. Generally, APRA will impose the following conditions on the limited ADI licence:

- PPF providers cannot accept deposits for the purpose of making advances of money (excluding incidental credit balances resulting PPFs);
- PPF providers must not represent they are an ADI without qualifying they are only authorised to provide PPFs and not authorised to take deposits;
- PPF providers can only conduct PPF operations and closely related services;
- PPF providers must be incorporated in Australia; and
- PPF providers must provide APRA with financial data on a periodic basis.

As set out in section 2, under certain circumstances, a company may also be required to apply for authorisation as a non-operating holding company (**NOHC**) of a group of companies that includes one or more ADIs. NOHCs do not carry on a business other than the business of ownership or control of other bodies corporate.

As well as the above, entities wishing to carry on banking business will likely need to hold an Australian financial services licence (**AFSL**) (see section 4) to provide financial services and an Australian credit licence (**ACL**) (see section 4) to undertake credit activities and provide credit services.

Finally, while not a licence:

- carrying on banking business will likely constitute providing designated services under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**). The AML/CTF Act regulates entities (referred to as **reporting entities**) that provide designated services with a geographical link to Australia. The geographical link is satisfied where the designated service is provided through a permanent establishment in Australia, the provider is a resident of Australia and the designated service is provided through a permanent establishment in a foreign country or the provider is a subsidiary of an Australian company and the service is provided through a permanent establishment of the subsidiary in a foreign country. Designated services include certain account related services where the account provider is an ADI, debit card and store value card services, remittance services and making a loan, where the loan is made in the course of carrying on a loans business. The AML/CTF Act and AML/CTF Rules require reporting entities to enrol with AUSTRAC, adopt and maintain a compliant anti-money laundering and counter-terrorism financing program (**AML/CTF Program**), report certain matters to AUSTRAC and keep records of certain matters. Reporting entities that provide remittance services or digital currency exchange services must also register with AUSTRAC; and
- ADIs must open an exchange settlement account (**ESA**) with the RBA. ESAs are the means by which providers of payments services settle obligations that have accrued in the clearing process.

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

Authorisation as an ADI or RADI under the Banking Act does not automatically permit other activities. The Banking Act does not generally govern or affect the relationship between an ADI and its customers. Many financial products and services offered by ADIs and other financial institutions fall outside the definition of "banking business" as regulated by the Banking Act (eg, credit facilities, non-cash payment (**NCP**) facilities including debit cards, direct debit or credit arrangements, finance lease, hire purchase, foreign currency exchange and derivatives). The provision of financial services and consumer credit services are regulated separately from the regulation of banking business under the Banking Act.

Financial services

Subject to limited exceptions, a person who 'carries on a financial services business in Australia' must hold an AFSL authorising the person to provide the relevant financial services. AFSLs are issued by ASIC. A financial services business is taken to be carried on where a person, in the course of carrying on a business, engages in conduct that is intended (or likely) to induce clients in

Australia to use a financial service provided by the person, even if the conduct is intended (or likely) to have that effect in other places as well. Financial services includes the provision of financial product advice, dealing in a financial product and making a market for a financial product, where "financial product advice","dealing" and "making a market" are widely defined to include many banking services. Financial products to which financial services relate include a range of banking products such as deposit products and NCP facilities (eg, debit cards). Broker dealer services and payment services (including in relation to e-money) will also fall within the AFSL regime.

One exemption from the requirement to hold an AFSL is available to an APRA-regulated body (including an ADI) where the service is one in relation to which APRA has regulatory or supervisory responsibilities and the service is provided only to wholesale clients as defined under the *Corporations Act 2001* (Cth) (**Corporations Act**). The provision of financial products and services by an ADI to a retail client generally requires an AFSL.

Consumer credit

Certain consumer credit activities are regulated separately by ASIC under the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**). A person engaging in a credit activity (eg, providing credit as a lender) or providing credit services (eg, providing credit assistance to customers) in connection with credit regulated under the National Credit Code (**NCC**) must hold an ACL or be entitled to rely on an exemption from the requirement to hold an ACL. The NCC applies to credit that is provided to natural persons or strata corporations, for a fee or charge, wholly or predominantly for (1) personal, household or domestic purposes, (2) to purchase, renovate or improve residential property for investment purposes or (3) to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes, and in the course of carrying on a business of providing credit in Australia. In the context of banking activities, ADIs must hold an ACL to lend to consumers (eg, personal loans, mortgages and credit cards).

Financial services and consumer credit providers may also have obligations under the AML/CTF Act (see section 3).

5. Is there a "sandbox" or "license light" for specific activities?

RADI

For banking activities, APRA offers a restricted pathway for locally incorporated entities to becoming an ADI, known as a RADI (see response to question 3). Becoming a RADI permits new applicants (who may not have the resources and capabilities to establish an ADI) to conduct limited banking business for up to two years, giving them time to develop the necessary resources and capabilities to meet the full prudential framework. The initial conditions on a RADI licence are more restricted than those of a full ADI licence, reflecting the restricted range of activities permitted under the licence, and RADIs are subjected to greater prudential supervision by APRA to account for the heightened risk profile of RADIs.

Fintech sandbox

For financial services and consumer credit activities, ASIC has made certain class orders establishing a fintech licensing exemption and released Information Sheet 248 *Enhanced regulatory sandbox*. ASIC's regulatory guidance details ASIC's framework for fintech businesses to test certain financial services, financial products and credit activities without holding an AFSL or ACL by relying on the class orders (referred to as the regulatory sandbox). There are strict eligibility requirements for both the type of businesses who can enter the regulatory sandbox and the products and services that qualify for the licensing exemption. Once a fintech business accesses the regulatory sandbox, there are restrictions on how many persons can be provided with a financial product or service and caps on the value of the financial products or services which can be provided.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

There are no specific restrictions with respect to the issuance or custody of cryptocurrency (eg, a regulatory or voluntary memorandum). However, the issuance or custody of cryptocurrency may be require the issuer or holder to be licensed under the Australian regulatory regime. Generally, the predominant focus on the regulation of cryptocurrency has revolved around the application of cryptocurrency and cryptocurrency-adjacent services to the established regulatory framework. For example, the features of a particular cryptocurrency or the features of a service permitting payment using cryptocurrencies may mean that it constitutes a financial product, triggering the AFSL requirement.

7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

Deposit products under the Corporations Act are any deposit-taking facility made available by an ADI under the Banking Act in the course of its banking business. To date, generally, it has been the case that crypto assets do not qualify as deposit products and wallets holding cryptocurrency are therefore not covered by deposit insurance. The Australian banking regulatory regime practically only applies to entities that deal in fiat currency and is not currently designed to support entities that deal exclusively in crypto assets (particularly crypto assets that are commodities or utilities and do not have the traditional function of money) and it would be practically difficult to meet the requirements of the banking regime.

On the segregation of funds, ASIC considers that specialised infrastructure and expertise is required to effectively, safely and securely custody crypto assets. Following its consultation on crypto assets (ASIC Consultation Paper 343 *Crypto assets as underlying assets for ETPs and other investment products*), ASIC has set out a number of good practices in Information Sheet 225 *Crypto-assets* relating to considerations when offering retail clients exposure to crypto assets. Specifically, ASIC has recommended (among other suggestions) that crypto assets be segregated on the blockchain such that customer assets are not comingled with the custodian's assets. While ASIC's guidance has been provided in the context of responsible entities engaging custodians to hold crypto assets in connection with retail managed investment schemes rather than banking, the guidance is relevant more generally as to its expectations for all entities that intend to custody crypto assets for clients, regardless of whether the crypto assets are regulated financial products.

Australia's regulatory framework (including how this relates to digital assets, payments, stored value and custody) is under review. It is anticipated that there will be recommendations that will impact how crypto assets and crypto asset-adjacent services are treated by regulators.

8. What is the general application process for bank licenses and what is the average timing?

ADI and RADI applications

The application process for an ADI licence involves the following steps:

- **Pre-application** – all entities contemplating an ADI licence are encouraged to engage APRA in preliminary consultation on its plans to carry on banking business in Australia, disucss licensing pathways and address any material issues or concerns raised by APRA prior to submission of their licencing application.
- **Lodging an application** – once an entity has addressed or has an acceptable proposal to resolve any issues arising from the pre-application meetings, the entity may make a formal application to APRA requesting authority to conduct banking business in Austrlalia and pays the applicable application fee. A non-refundable application fee is payable prior to APRA commencing a detailed assessment of the applicant. As at the timing of writing the fee is AUD$110,000 for an ADI and AUD$80,000 for a RADI. RADIs must pay an additional AUD$30,000 upon progressing to becoming an ADI. The application must be accompanied by supporting documents as set out in APRA's published guidelines;
- **Assessment** – APRA will assess the application in an iterative process with the applicant. This process includes APRA providing feedback and/or requesting further information, meetings with senior officers and other responsible persons, review of policies and procedures and an on-site review. The applicant must be able to demonstrate:
    - an approprach which proportionately meets the requirements of the prudential standards;
    - a sound risk culture; and
    - that it has adequate financial and non-financial resources, including staff with appropriate expertise to commence operations for which it is being licenced and to competently implement sound risk maangement practices.

The applicant's supporting documents generally includes details related to the applicant's ownership and management, three-year business plan, financial resources, and risk management procedures.

- **Substantially complete application** – When APRA considers the application to be substantially complete, it will advise the applicant. At this stage, an applicant will have demonstrated that it has sufficient financial and non-financial resources, and has

submitted all of the expected supporting material which is of succifient quality and detail to allow APRA to complete its assessment.
- **Licensing decision** – APRA's licensing team's recommendation as to whether to grant a licence is subject to a challenge process by APRA's subject matter experts. Once APRA's licensing team prepare a final recommendation on the application, an independent decision-maker will determine whether APRA will grant or refuse the application of the ADI licence based on the financial risks faced by the applicant and any threat it poses to a stable financial system. Unsuccessful applicants will be advised of the reasons for the decision in writing and may request APRA to review its decision.

RADIs will be expected to demonstrate a credible business plan, a credible plan to meet the prudential framework for new ADIs within a period of two years including launch of live products during the restricted phase, and a credible contingency plan that includes at least one option to execute an orderly andsolvent exit from banking business.

As APRA's assessment of applications is an iterative process, the time taken to obtain a licence varies among applicants. Assessment for an ADI generally takes 12-18 months and depends on factors such as the complexity of proposed arrangements, the applicant's responsiveness to any inquiries or requests by APRA, and the quality of the documentation submitted. Assessments for prospective RADIs generally take at least 6 months.

PPF application

The application process for an ADI licence involves the following steps:

- **Pre-application** – APRA encourages all PPF provider applications to contact APRA for preliminary consultation such that APRA can identify any matters that might adversely impact on the proposal and advise on the format and required content.
- **Lodging an application** – once an entity has addressed or has an acceptable proposal following the pre-application meetings, the entity may make a formal application to APRA and pay the applicable application fee. A non-refundable application fee is payable prior to APRA commencing a detailed assessment of the applicant. As at the timing of writing the fee is AUD$55,000 for a PPF provider. The application must be accompanied by supporting documents as set out in APRA's published guidelines;
- **Processing and assessment** – APRA will assess the application in an iterative process with the applicant. This process includes APRA providing feedback and/or requesting further information, meetings with senior officers and other responsible persons, review of policies and procedures and an on-site review. In terms of timing, the time required to process an application will depend on the particular circumstances of each application.

9. Is mere cross-border activity permissible? If yes, what are the requirements?

Mere cross-border activity is permissible in certain circumstances. An overseas bank may conduct banking business with Australian counterparties from an offshore office without a licence from APRA, provided the overseas bank does not:

- maintain an office or permant staff in Australia, including staff employed by another entity wihtin the banking group that conducts business on its behalf;
- solicit business from retail customers in Australia;
- use a "restricted word" under section 66 of the Banking Act (eg, bank, banker, banking, building society, credit union, or credit society) in its business without consent from APRA; and
- all business contracts and arrangements are clearly transacted and booked in offshore and are subject to an offshore legal and regulatory jurisdiction.

If the above requirements are not satsified, overseas banks are still able to operate in Australia in a number of ways depending on the type of business they will be conducting. Each of the following pathways to operating in Australia require authorisation of the overseas bank's home country supervisor:

- **Representative Office** – An overseas bank may establish a representative office to conduct liaison and research activities in Australia. The representative office must not conduct any form of banking business or activities related to the administration of banking business. Overseas banks must apply for consent from APRA to estsablish a representative office and receive an additional consent from APRA if any “restricted words” are used in the course of their business. This consent will, generally, require that the overseas bank is subject to adequate prudential supervision as a bank in its home country and is of good repute.

- **Foreign ADI** – An overseas bank may conduct carry out banking business with wholesale clients in Australia by obtaining a foreign ADI licence and establishing an Australian branch. Applicants must apply to APRA for authority to conduct banking business in Australia as a foreign ADI. Whilst foreign ADIs are not subject to capital requirements by APRA, they will need to meet other local regulatory requirements applicable to its business (eg, restrictions on deposits and generally provide products and services to wholesale clients only). Applicants should also consider non-APRA regulated requirements such as their need for an AFSL or ACL (see section 4), FIRB approval and an Exchange Settlement Account. See section 11 for further organisational requirements for foreign ADI licencees.
- **Subsidiary ADI** – An overseas bank may conduct banking business and provide services to wholesale and retail clients in Australia by establishing a locally-incorporated subsidiary ADI. A locally-incorporated subsidiary ADI is a separate legal entity from its overseas parent and will need to meet the local capital and regulatory requirements outlined in section 11 on a stand-alone basis.
- **Non-bank locally incorporated subsidiary** – An overseas bank which wishes to offer non-banking financial services to both retail and wholesale clients in Australia can establish a non-bank locally incorporated subsidiary. A non-banking financial business is licensed and regulated by ASIC, and restrictions on the use of the word “bank” will apply.

Overseas banks that wish to carry on a financial services business in Australia will be required to hold an AFSL or be otherwise exempt from the AFSL requirement. Similarly, overseas banks that wish to undertake credit activities or provide credit services must hold an ACL or be otherwise exempt from the ACL requirement. There are exemptions from the AFSL requirement for certain foreign financial services providers (**FFSPs**) however the Australian FFSP regulatory regime is currently in a state of flux and there are possible legislative changes on the horizon. In January 2021, the Australian Treasury closed consultation on draft legislation updating the FFSP regulatory regime. The draft legislation seeks to introduce:

- the comparable regulator exemption, which exempts FFSPs authorised to provide financial services in a comparable regime from the requirement to be licensed when dealing with wholesale clients;
- the professional investor exemption, which exempts FFSPs that provide financial services from outside Australia to professional investors from the requirement to be licensed in Australia; and
- an exemption from the fit and proper person assessment to fast track the AFSL process for FFSPs authorised to provide financial services in a comparable regulatory regime.

Note, a foreign entity that carries on a business in Australia must register with ASIC as a branch office of a foreign incorporated entity or as a locally incorporated subsidiary.Whether a body is carrying on a business will depend on certain legal principles and factual circumstances. Under the Corporations Act, an entity will be deemed to be carrying on a business in Australia if it has a place of business in Australia, establishes or uses a share transfer office or share registration office in Australia or administers, manages or otherwise deals with, property situated in Australia as an agent, legal representative or trustee. There is also a general law test that considers the level of system, repetition and continuity of an entity’s business activities in Australia. The higher the level of system, repetition or continuity the more likely it is that such activities amount to “carrying on a business” in Australia. For example, an insignificant and one-off transaction is arguably not indicative of a business being carried on in Australia. However, a number of small transactions occurring regularly, or a large one-off transaction, may amount to carrying on a business.

10. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

All ADIs must be incorporated and subject to the requirements of the Corporations Act. This means that associations, partnersips or unincorporated entities are not eligible to apply for an ADI licence with APRA. Australian branches of foreign ADIs are not subject to this requirement unless the overseas bank wishes to provide its services to retail clients in Australia. In this event, a locally-incorporated subsidiary of the foreign ADI must be established.

11. What are the organizational requirements for banks, including with respect to corporate governance?

Overview

APRA regulates ADIs primarily through the establishment and enforcement of prudential standards with which ADIs must comply. APRA's prudential standards generally concern risk management for ADIs and are based on the banking supervision principles published by the Basel Committee on Banking Supervision. The prudential standards include requirements regarding capital adequacy (see section 13), credit risk, market risk, securitisation, covered bonds, liquidity (see section 15), large exposures, associations with related entities, outsourcing, business continuity management, audit and reporting, governance and fit and proper management.

Management of a company is typically vested in the board of directors which is considered paramount towards the good governance of an ADI. The board must have the required skills and experience to competently oversee the business. APRA Prudential Standard CPS 510: Governance (**CPS 510**) sets out the prudential requirements for the size, composition and independence of boards of directors of ADIs. Organisational requirements under CPS 510 include the following:

- a locally incorporated ADI must have at least 5 directors at all times;
- the chairperson of the board must be an independent director and must not have been the Chief Executive Officer of the institution at any time during the previous 3 years;
- a majority of directors present and eligible to vote at board meetings must be non-executive directors and a majority of directors must be independent directors;
- for locally owned and incorporated ADI, a majority of directors must be ordinarily resident in Australia;
- for foreign-owned, locally incorporated ADI, at least two of the directors must be ordinarily resident in Australia, at least one of whom must also be independent; and
- the ADI must also have a policy on board renewal and procedures for assessing board performance in place at least annually, and various executive committees including a remuneration committee, audit committee and risk committee.

ADIs in Australia are also subject to a range of other corporate governance requirements and guidelines including APRA prudential standards, the Corporations Act (eg, continuous disclosure obligations, financial reporting obligations, directors' duties and annual meeting requirements); ASX Listing Rules (eg, disclosure obligations and ongoing requirements); and voluntary industry standards such as the Australian Banking Association Banking Code of Practice and ASIC's ePayments Code.

Under the Corporations Act, ADI executive and non-executive directors have statutory duties of care, diligence and good faith. Under the Banking Act, ADI directors must take reasonable steps to ensure compliance with directions from or requirements of APRA. Individuals with key positions of responsibility within ADIs are required by Prudential Standard CPS 520: Fit and Proper (**CPS 520**) to maintain minimum fit and proper standards. ADIs are required to take a very active role in dealing with risks and building appropriate systems as set out in CPS 520. The board of directors is responsible for having a "risk management framework that is appropriate to the size, business mix and complexity" of the institution or group it heads.

Banking Executive Accountability Regime

The Banking Executive Accountability Regime (**BEAR**) under Part IIAA of the Banking Act establishes accountability obligations for ADIs and their "accountable persons". An Australian incorporated ADI's accountable persons include its directors, senior executive positions such as chief executive officer, chief financial officer, chief operating officer, persons with senior executive responsibility for the ADI's internal audit, human resources, compliance and anti-money laundering functions; and other executives with responsibility for the ADI's management or control. The regime aims to hold ADIs and their directors and senior executives accountable to higher standards of behaviour by establishing deferred remuneration, key personnel and notification obligations for ADIs.

Under the regime, accountability obligations require an ADI's accountable persons to be registered with APRA and require them to conduct their business and responsibilities with honesty, integrity, due care, skill and diligence; deal with APRA in an open, constructive and cooperative way; and prevent matters from arising that would adversely affect the ADI's prudential standing or prudential reputation. ADIs also have an obligation to ensure that their accountable persons and their non-ADI subsidiaries comply with the accountability obligations.

FAR

In July 2021, the Australian Government released draft legislation for the financial accountability regime (**FAR**), intended to replace BEAR. FAR is intended to be jointly administered by APRA and ASIC and arises from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Banking Royal Commission**) recommendations that BEAR be extended to all APRA-regulated entities. FAR will replace and extend the obligations under the BEAR regime. For example, FAR proposes to extend the persons captured as accountable persons to include persons who have senior executive responsibility for significant business division/s, dispute resolution and breach reporting. Accountable persons will also be required to take reasonable steps in conducting the responsibilities of the accountable person's position and in ensuring that the entity complies with its licensing obligations. It is anticipated that the FAR regime will apply to ADIs and NOHCs from the later of 1 July 2022 or six months after commencement of the FAR legislation. To the extent FAR is implemented, APRA will review and revise CPS 520 accordingly.

12. Do any restrictions on remuneration policies apply?

It is generally expected that APRA-regulated entities have established performance-based incentive structures that align remuneration outcomes with good risk management and the long-term success of the business. Prudential Standard CPS 510 sets out specific requirements of remuneration policies of ADIs. For example, locally incorporated ADIs must have a remuneration committee to oversee the ADI's remuneration policy composed of at least 3 directors, a majority of whom are non-executive directors. The ADI's remuneration policy must set out the structure and objectives of its remuneration arrangements. CPS 510 does not mandated any particular division between fixed and variable remuneration.

The BEAR accountability regime also sets out deferred remuneration obligations which require ADIs to set remuneration policies that defer or reduce an accountable person's variable remuneration. A specified proportion of the variable remuneration of accountable persons must be deferred for at least 4 years (or a shorter period approved by APRA). The proportion of variable remuneration must depend on the particular accountable person's role and the size of the ADI. These deferred remuneration obligations are intended to incentivise senior managers to make decisions for the long-term benefit of the ADI. The obligation cannot be avoided simply by not paying variable remuneration or paying only token variable remuneration, as the thresholds are expressed in terms of variable remuneration and total remuneration. For example, for CEOs of large ADIs, the lesser of 60 per cent of variable remuneration or 40 per cent of total remuneration must be deferred. Deferred variable remuneration must also be withheld if the ADI considers it likely that an accountable person has failed to comply with his or her accountability obligations, pending determination of whether they have in fact failed to meet their accountability obligations.

Under FAR, remuneration obligations will also apply to accountable persons. Accountable persons are required to have at least 40 per cent of their variable remuneration deferred for four years and this level of remuneration can be reduced where an account person breaches their obligations.

13. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

In November 2021, APRA released the final bank capital framework to embed strong capital requirements for ADIs to strengthen financial system resilience. The new framework updates Australian standards to align with the internationally agreed Basel III regulatory capital framework and will come into force in 2023. The regulatory capital requirements for ADIs ensure that Australian ADIs maintain adequate capital on an individual and group basis to act as a buffer against the risks associated with their activities and are set out in prudential standards, including Prudential Standard APS 110: Capital Adequacy (**APS 110**). APS 110 does not apply to foreign ADIs, which are expected to meet comparable capital adequacy standards in their home jurisdictions. APS 110 also does not apply to PPFs.

Some amendments to the Basel III framework have been implemented through adjustments for Australian conditions. In a number of areas, APRA's prudential standards go beyond the minimum Basel III capital requirements. For example, in exercising its discretion in relation to the definition and measurement of capital, APRA's prudential standards in these areas have resulted in a more conservative capital adequacy regime for Australia than is required under Basel III. APRA has also introduced a set of simplified capital requirements that can be applied to smaller, less complex banks to avoid unnecessary regulatory burden without jeopardizing prudential safety as the Basel framework was developed primarily for large, internationally active banks.

14. Are there any requirements with respect to the leverage ratio?

The global financial crisis of 2008 cast light on the potential economic harm a build-up of on and off-balance sheet leverage in the banking system can cause. As a result, the Basel Committee on Banking Supervision introduced a leverage ratio in the 2010 Basel III capital reforms. The leverage ratio is calculated by dividing the Tier 1 capital held by a bank by its total on and off-balance sheet exposures. The leverage ratio is intended to supplement the risk-based capital requirements implemented by the Basel Committee and act as a "backstop" to reduce the damage deleveraging can inflict on the stability of the banking system and broader economy.

There is currently no minimum leverage ratio requirement for Australian ADIs, however APRA requires ADIs to adopt an internal model approach for credit risk under the risk-based capital adequacy framework to disclose certain quantitative and qualitative information about its leverage ratio. In 2018, APRA commenced a consultation process on proposals to implement a minimum leverage ratio requirement. Following subsequent consultations, APRA new capital framework proposes a minimum of 3.5% for ADIs that use an internal ratings-based (**IRB**) approach to determine capital adequacy consistent with the Basel Committee on Banking Supervision's minimum requirement. For all standardised ADIs, APRA may apply a leverage ratio requirement but does not mandate one to lessen the burden for ADIs and increase efficiency for smaller ADIs. The implementation of APRA's proposed revisions to the capital framework was delayed as a result of the COVID-19 pandemic and will now come into effect from 1 January 2023.

15. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

APRA sets liquidity requirements and guidelines for Australian ADIs through Prudential Standard APS 210: Liquidity (**APS 210**) and Prudential Practice Guide APG 210: Liquidity (**APG 210**). APS 210 is mostly focused on funding liquidity. APS 210 requires ADIs to have sufficient liquid assets on hand to repay any funding withdrawals in the short-term, appropriately structured balance sheets to minimise funding liquidity risk in the longer term, and board and management to have strong frameworks in place to manage liquidity.

APS 210 requires that larger, more complex ADIs meet a liquidity coverage ratio (**LCR**) that reduces liquidity risk over the following month during an assumed period of stress, and a Net Stable Funding Ratio (**NSFR**) minimizes liquidity risk over the following year. An ADI to which the LCR applies must maintain an adequate level of unencumbered High Quality Liquid Assets (**HQLA**) to meet its liquidity needs over 30 calendar days under a severe stress scenario.

For less complex ADIs (such as credit unions and building societies), APS 210 requires that they maintain sufficient minimum liquid holdings (**MLH**) to manage liquidity risk over both short and longer periods. The MLH ratio requirement specifies a level of eligible liquid assets (as a percentage of liabilities) that must be held as determined on a case-by-case basis taking into account any off-balance sheet commitments. An ADI to which MLH applies must hold unencumbered specified liquid assets of 9 per cent of its liabilities. Specified liquid assets include physical currency, Australian government securities, foreign government securities eligible for repurchase with the RBA, bank bills certificates of deposit and debt securities by ADIs and net at-call deposits with other ADIs equivalent.

Higher liquidity requirements may be applied by APRA if it has concerns about the ADIs liquidity risk profile or the quality of its liquidity management. Unlike capital requirements, liquidity requirements apply to both locally incorporated ADIs and ADIs that are local branches of foreign banks.

16. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

ADIs and non-bank lenders that are 'registrable corporations' (ie, corporations that engage in the provision of finance in the course of carrying on business in Australia) have general financial reporting obligations under the *Financial Sector (Collection of Data) Act 2001* (Cth) (**FSCODA**). FSCODA primarily operates to facilitate the collection of statistical data on financial sector entities to assist APRA with performing its supervisory functions and for statistical purposes. There are certain exceptions from the definition of registrable corporation, including entities for which the sum of the values of the corporation's assets in Australia that consist of debts due to the corporation resulting from transactions entered into in the course of the provision of finance by the corporation and the sum of the values of the principal amounts outstanding on loans or other financing does not exceed $50,000,000.

Under FSCODA, APRA has issued reporting standards prescribing the financial and accounting information entities regulated by FSCODA must supply to it and the manner and form in which it is to be submitted. Reporting Standard ARS 323: Statement of Financial Position (Licenced ADI) (**ARS 323**) requires regulated entities to supply to APRA a statement of financial position. In addition to general financial reporting obligations, ADIs and non-bank lenders who carry on a business of providing finance are subject to further reporting requirements under FSCODA. The data required to be submitted to APRA includes specific information about the nature of the assets and liabilities held by that entity. Generally, ADIs and non-bank lenders are obliged to report to APRA monthly or quarterly, depending on the type of entity and the nature of the information provided. A summary of the data collected by APRA is made available to the public, with APRA also sharing the data it collects with other regulators and the Australian Bureau of Statistics.

17. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

APRA practises consolidated supervision of conglomerate groups operating in the financial services sector. APRA has set out a tiered approach to how the prudential standards are applied to entities, where:

- Level 1 supervision applies to an individual APRA-regulated institution or an Extended Licensed Entity (**ELE**) comprising the ADI and each subsidiary of the ADI that APRA treats as part of the ADI for prudential purposes. The treatment of a subsidiary as forming part of the ELE is in APRA's discretion (at APRA's discretion).
- Level 2 means supervision applied by APRA to an ADI Level 2 group, which includes the ADI and all its subsidiary entities (or, if the ADI is a subsidiary of an authorised NOHC, the consolidation of the immediate parent of the ADI and all the immediate parent's subsidiary entities) other than certain non-consolidated subsidiaries.
- Level 3 means supervision applied by APRA to a Level 3 group – APRA may, at its discretion, apply the Level 3 prudential framework to a conglomerate group, containing at least one APRA-regulated institution, which APRA considers to have material activities across more than one APRA-regulated industry and/or in one or more non-APRA-regulated industries. A Level 3 group comprises all institutions that are part of a consolidated entity, adjusted to include or exclude institutions as determined by APRA by notice in writing to the head of the group (**Level 3 Head**), of which the Level 3 Head is the ultimate holding company, the ultimate Australian parent or certain reporting entities.

18. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

Ownership of ADIs is governed by the the *Financial Sector (Shareholdings) Act 1998* (Cth) (**FSSA**). The FSSA restricts the shareholdings of individuals or a group of associated shareholders in certain financial sector companies, including ADIs and their holding companies to a 20% stake. All shareholders must also be fit and proper. A person holds a stake only if the person holds a direct control interest and is the aggregate of the person's voting power and the voting power of the person's associates. The Treasurer can approve a higher percentage shareholding limit in certain circumstances such as where it is in the national interest to approve a higher than 20% stake and this approval may be subject to any restrictions on the duration and substance of the shareholding that the Treasurer sees fit. Penalties apply to an unacceptable shareholding held without the Treasurer's consent. The Federal Court has powers to make orders to restrain or reduce the unacceptable shareholding.

Under the FSSA, the Treasurer can declare that a person whose stake does not exceed 20% still has practical control if the:

- directors of a financial sector company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person (either alone or together with associates); or
- a person (either alone or together with associates) is in a position to exercise control over a financial sector company; and
- the Treasurer is satisfied that the person does not hold a stake in the company or where the person does hold a stake, that stake is not more than 20%; and
- the Treasurer is satisfied that it is in the national interest to declare that the person has practical control of the company for the purposes of the FSSA.

Once a declaration is made, the Federal Court may make remedial orders and require the relevant shareholder to relinquish their practical control over the company.

Under the Banking Act, an ADI must seek the permission of the Treasurer to effect an arrangement for the sale or disposal of its business by amalgamation or otherwise or form a partnership with another ADI. From a competition perspective, the *Competition and Consumer Act 2010* (Cth) (**CCA**) applies in respect of mergers of financial instsitutions. The CCA prohibits a person from acquiring an ADI in circumstances which would substantially lessen market competition unless authorised by the ACCC. Takeover laws under the Corporations Act also apply where an ADI is a listed company or an unlisted compay with more than 50 members. The Corporations Act imposes restrictions on certain acquisitions of relevant interests in voting shares unless an exemption applies.

Approval under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) is required for an acquisition of an ADI by a a foreign entity – see response to section 20.

19. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

Longstanding legislative frameworks govern requirements on the ownership of ADIs, with concentration requiring specific approval and an assessment under the national interest or a fit and proper test for some small applicants – see response to section 18.

20. Are there specific restrictions on foreign shareholdings in banks?

Acquisitions of local ADIs by foreign persons are also subject to the Australian foreign investment approval regime, which is governed by the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**). Under the regime, acquisitions of a substantial interest in an Australian corporation by foreign persons that satisfy a monetary threshold must be notified to the Treasurer, who is advised by the Foreign Investment Review Board (**FIRB**), which examines foreign investment proposals. The Treasurer has powers to prohibit the acquisition or to require the acquired assets to be disposed of if the acquisition is not in the national interest.

Generally, a foreign person is:

- an individual not ordinarily resident in Australia;
- a corporation in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest;
- a corporation in which 2 or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest;
- the trustee of a trust in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; or
- the trustee of a trust in which 2 or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; or
- a foreign government.

A person holds a substantial interest in an entity, trust or unincorporated limited partnership if the person holds an interest of at least 20% in the entity or partnership or the person, together with any one or more associates, holds a beneficial interest in at least 20% of the income or property of the trust.

Before the pandemic, acquisitions were subject to FIRB approval to the extent the acquisition exceeded a particular monetary threshold. During the COVID-19 pandemic, the Government amended the monetary thresholds for all transactions to A$0. From 1 January 2021, the monetary threshold has been partially removed but transactions such as investments in national security businesses and investments by foreign government investors will continue to have a A$0 monetary threshold.

21. Is there a special regime for domestic and/or globally systemically important banks?

APRA has a framework for dealing with domestic systemically important banks (**D-SIBs**) in Australia, which has regard to the Basel Committee on Banking Superivision's D-SIB framework. Specifically, APRA's assessment methodology has regard to the Basel Committee's four key indicators of systemic importance, being size, interconnectedness, substitutability and complexity and incorporates the Basel Committee's higher loss absorbency (**HLA**) capital requirement for banks identified as D-SIBs.

The HLA capital requirement for D-SIBs is intended to reduce the probability of failure compared to non-systemic institutions. APRA has determined that a one per cent HLA requirement will apply to Australian D-SIBs, which must be met by Common Equity Tier 1 capital and will be implemented as an extension of the capital conservation buffer as defined in APS 110 Capital

Adequacy.

APRA has determined that four banks in Australia are currently D-SIBs.

The Basel Committee has also established indicators to determine whether a bank should be regarded a global systemically important bank, known as a G-SIB. As at November 2021, no Australian incorporated bank meets the criteria to be a G-SIB.

22. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

Entities that must comply with APRA's prudential standards are responsible for compliance with such standards, including implementation and monitoring. Failure by an ADI (or any of its group members) to report a breach carries a penalty of 200 penalty units, with criminal liability for officers in extreme circumstances.

If APRA has reason to believe that an ADI has contravened or is likely to contravene a prudential standard, APRA has the power to issue directions requiring the ADI to undertake (or not to undertake) certain actions, including requiring compliance with the relevant prudential standard, removing a director or senior manager, or requiring an audit. Non-compliance with such a direction carries a penalty of 50 penalty units and gives APRA power to revoke the authorisation. A responsible officer who fails to take reasonable steps to ensure compliance with such a direction will be guilty of an offence.

23. What is the resolution regime for banks?

There is no special resolution regime for ADIs under current Australian law and APRA does not support the bail-in of deposits to resolve an ADI in difficulty (see response to question 25). However, the Banking Act sets out that the duty of APRA is to exercise its powers and functions for the protection of depositors and for the promotion of financial system stability in Australia, and APRA has certain powers to intervene where an ADI may be in distress. For example, APRA is permitted to appoint a statutory manager, give specific directions to an ADI in certain circumstances (eg, the ADI is or will soon be unable to meet liabilities, APRA considers it necessary to protect depositors and the ADI has contravened the Banking Act) or restructure the ADI's business as needed (eg, by way of merger or reconstruction).

24. How are client's assets and cash deposits protected?

The Financial Claims Scheme (**FCS**) was established by the Australian Government to provide a guarantee of deposits of up to A$1 million held with local ADIs (including Australian incorporated subsidiaries of foreign banks, but not Australian branches of foreign banks). Under the FCS, the Government guarantees certain "protected accounts" held at an Australian ADI in the event that the ADI becomes a "declared ADI". This will occur if APRA has applied to the Federal Court of Australia to wind up that ADI, and the Finance Minister has made a declaration under the Banking Act. Under the FCS, the Treasurer may declare that the FCS applies to an ADI if a statutory manager is in control of an ADI or APRA has applied for an ADI to be wound up. Operation of the FCS is not automatic; it is activated at the discretion of the Treasurer.

Protected accounts are guaranteed up to a cap of A$250,000 per account holder per ADI. The FCS is administered by APRA.

25. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered?

Under current Australian law, the bail-in of deposits to resolve an ADI in difficulty is not permitted and APRA has stated its support for this position, noting a bail-in is against APRA objectives and would reduce overall confidence of depositors, which may have an impact on broader financial stability. APRA has no specific power to bail-in an ADI's creditors by converting or writing off their claims, although APRA may use its transfer and direction powers which could result in similar economic results in certain circumstances.

Whilst there is no specific bail-in tool in bank resolution, additional Tier 1 and Tier 2 capital instruments which contain contractual provisions for the conversion of ordinary shares or write-off when required to absorb losses. These additional requirements for loss absorbing capacity for the major banks are required to be met through the issue of more Tier 2 capital. In addition, depositor protection provisions under the Banking Act are in place such that deposits must be repaid first if an ADI is in financial crisis and the FCS allows for deposits of up to a $250,000 cap to be safeguarded by the Australian Government.

26. Is there a requirement for banks to

hold gone concern capital ("TLAC")?

The introduction of the requirement for banks to hold gone conern capital and total loss-absorbing capacity (**TLAC**) is in progress. In 2018-19, APRA consulted on a framework for TLAC to support resolution planning for ADIs. The framework seeks to ensure that in the event that a large or complex ADI failed, it could be resolved with minimal impact to the critical functions it provides to the economy and the community (eg, deposit-taking and payments). Loss-absorbing capacity also reduces the risk of taxpayer funds being used for resolution purposes. For D-SIBs, APRA proposed to increase minimum Total Capital requirements. For other ADIs, financial resources for resolution will be assessed as part of planning under the new Prudential Standard CPS 900 Resolution Planning (**CPS 900**) which has been released in draft. APRA anticipates that most non-D-SIBs will not be required to maintain additional loss-absorbing capacity for resolution purposes.

On 2 December 2021, APRA announced that it is finalising loss-absorbing capacity requirements for D-SIBs which will be implemented in a staged approach. This requirement is set as an increase to minimum Total Capital requirements of 3 percentage points of risk-weighted assets (**RWA**) on a Basel III Basis in the interim effecitve from 1 January 2024, and a final requirement of 4.5 percentage points of RWA effective from 1 January 2026.

27. In your view, what are the recent trends in bank regulation in your jurisdiction?

The COVID-19 pandemic has significantly impacted the banking sector and how it is regulated in Australia. Throughout the pandemic, APRA has sought to maintain the safety, stability and resilience of Australia's banks and the broader financial system. While continuing to focus on ensuring financial stability in the face of COVID-19, APRA's policy and supervision priorities for 2022 include a heightened emphasis on new and emerging finanical risks, improving crisis preparedness (including contingency and resolution planning), implementing the bank capital reforms to embed unquestionably strong capital ratios and the Basel III reforms, supervising cyber risk preparedness and responsiveness, continuing focus on risk culture, and upgrading contingency and continuity frameworks.

Since the Banking Royal Commission published its final report on 4 February 2019, legislation enacting many of the recommendations has been passed or proposed and legislative reform is continuing. Banking regulators also continue to focus on implementing the recommendations in the final report. The regulatory changes anticipated are outlined in the federal government's Banking Royal Commission Implementation Roadmap. It is generally expected that there will be more stringent legislative regulations in the banking industry focussed on consumer protection. The *Financial Sector Reform (Hayne Royal Commission Response) Bill 2020* was introduced to give legislative effect to 20 Banking Royal Commission recommendations. Key measures of the Bill include, among other things, banning the hawking of financial products, introducing a deferred sales model for add-on insurance products and enabling provisions in financial services industry codes to be enforceable. Recent cases demonstrate that ASIC and APRA remain committed to taking enforcement action in relation to matters referrred by the Commissioner. The Australian Government has indicated that it will establish an independent inquiry in 2022 to assess whether industry practices have changed since the Banking Royal Commission.

Developments in financial technology (**fintech**) have increasingly become a defining feature of Australia's economic and legal standing with a broadening of product offerings and maturing of the Australian policy and regulatory approach. In particular, Australian fintechs have focussed on disrupting the core product offering of many Australian institutional financial service providers, including banking services, payments, wallets, and wealth and investment, and there has been a commensurate rise in the number of digital banks (known as neobanks) emerging in the Australian market. Following APRA's introduction of the Restricted ADI licensing framework in 2018, there have considerable new entrants that have become ADIs through the restricted ADI pathway, with many of these banks broadly focused on retail banking. Last year, APRA revised its approach to licensing and supervising new ADIs to address sustainable market entry challenges. The regime still enables RADIs to conduct a limited range of banking activities for two years while building capabilities and resources but has been amended to reflect APRA's greater understanding of the operational and financial challenges new entrants face. The framework is designed to balance the promotion of competition and development of innovative new business models with the maintenance of safety and stability in the financial system. Over the next few years, it is likely the market will see more sophisticated offerings from these neobanks as well as the introduction of neobanks focused on a broader range of services (eg, the provision of small and medium-sized enterprise credit).

There has been a continued increase in deferred payment solutions in the market following deep consumer interest and uptake compared to more traditional short-term credit (eg, credit cards). Most significantly, there has been mass consumer adoption of “buy now, pay later” (**BNPL**) as a payment model. As a result, there has been heightened regulatory scrutiny of BNPL service providers and the Government’s announcement of its intention to modernise payments system legislation to accommodate BNPL structures.

28. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

Fintech and the rapid digital evoluation of the financial sector in Australia poses many challenges and opportunities for both the sector’s financial institutions and regulators. Banks and regulators have had to change their priorities as the digitisation of finance continues to accelerate, business models adapt and innovation tests traditional regulatory boundaries and supervisory practices. Regulators and the Government face the challenge of adapting and aligning existing financial regulation to new products and services, balancing innovation with consumer protection. Despite the Australian Government’s broad commitment to encouraging growth and productivity within the technology and financial services industry, it is generally expected that regulator engagement is likely to be more rigorous and the regulatory approach to enforcement more proactive given the Australian Government and regulatory focus on consumer protection and outcomes.

Generally, the changing regulatory landscape in Australia and active interest from regulators presents established banking institutions the challenge of redesigning their existing technology platform, strategies and capabilities to better serve consumers. At the same time, new banks will have opportunities to shape new business models to meet increasing demand for bespoke offerings and tailored services.

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