

Case Studies Analysis: Law of Financial Institutions and Securities

Regulatory framework environment and legal matters in Australian banks

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Abstract

The regulatory framework in the country of Australian of monitoring and regulating financial institutions and banks lies essentially with multiple regulators in the Australian Prudential Regulation Authority (APRA), Australian Securities and Investments Commission (ASIC), and the Reserve Bank of Australia. The APRA is committed to promoting sound risk management practices among the banks and ensuring that the banks' behavior is within the norms and limits that have been set out in their regulatory framework. Before the establishment of APRA, the regulation of banks in Australia was in the hands of Reserve Bank of Australia. The banking act is also the most essential regulatory document which has to be adhered by every bank in the country of Australia. Additionally, all the banks in the country of Australia have set up Banking Ombudsman, a self-regulatory initiative of the Australian Banks, which oversees and investigates complaints of the consumer so that a feasible solution is reached outside the confines of the courts. It is not compulsory for all the banks to be associated with the ombudsman, but there has been pressure from the regulators that all the banks should come under its purview and compliance norms. The Australian banks also have to be constantly monitored to enforce compliance with prudential regulation so that any evidence of financial difficulties can be handled with diligence at the earliest. The APRA also has the power to make sure that in case of any difficult situations for the bank, it can for the welfare of the account holders, and make changes as it sees best in the management board, or can also instill a merger of this bank with another bank with sound and healthy finances. (Reserve Bank of Australia, 2010)



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Assignment Title: Analyzing individual personality types available in Facebook Chatroom
Book of Gordon (Should be using MBTI and their work information).

Assignment Number (1): Due Date: ___April 2014 November Spring (2+2)

Subject Code: _____ **Subject Name:** Introduction to Behavioral Science Section C

Course Instructor: Mst. Dr. Huda Begum Program BBA

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REGULATORY FRAMEWORK OF AUSTRALIAN BANKS

The regulatory framework in the country of Australian of monitoring and regulating financial institutions and banks lies essentially with multiple regulators in the Australian Prudential Regulation Authority (APRA), Australian Securities and Investments Commission (ASIC), and the Reserve Bank of Australia. The APRA is committed to promoting sound risk management practices among the banks and ensuring that the banks' behavior is within the norms and limits that have been set out in their regulatory framework. Before the establishment of APRA, the regulation of banks in Australia was in the hands of Reserve Bank of Australia. The banking act is also the most essential regulatory document which has to be adhered by every bank in the country of Australia. Additionally, all the banks in the country of Australia have set up Banking Ombudsman, a self-regulatory initiative of the Australian Banks, which oversees and investigates complaints of the consumer so that a feasible solution is reached outside the confines of the courts. It is not compulsory for all the banks to be associated with the ombudsman, but there has been pressure from the regulators that all the banks should come under its purview and compliance norms. The Australian banks also have to be constantly monitored to enforce compliance with prudential regulation so that any evidence of financial difficulties can be handled with diligence at the earliest. The APRA also has the power to make sure that in case of any difficult situations for the bank, it can for the welfare of the account holders, and make changes as it sees best in the management board, or can also instill a merger of this bank with another bank with sound and healthy finances. (Reserve Bank of Australia, 2010)

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Commented [A2]: Properly referenced

The Australian banks also have to comply with the capital adequacy norms that are in conjecture with the international standards in line with the recommendation of the Basel

committee. The Australian banks in line with the Basel 2 have to hold a certain limited amount of capital that just offsets its likelihood of incurring losses. The APRA in line with the Basel standards makes it mandatory that no more than 25 percent of capital in the form of ordinary shares, convertible securities and retained earnings can be a part of the Tier 1 capital because of the difficulty to assign losses to these instruments. The Tier 2 capital of the banks has to be in the form of subordinated debt and Cal also includes preference shares. (Reserve Bank of Australia, 2010)

For the purpose of measuring the adequacy of capital, the banks have to provide a quantitative measure for their credit, market and operational risk undertaken by the banks in their business. However, according to the APRA, the most important risk metric measure that the banks have to comply in accordance with the norms set is the credit risk measure. The risk weights are prescribed by the APRA in terms of the banks individual credit exposure, which gives rise to risk weighted assets. However, the APRA has granted the four largest banks to use their modeling of the risk weights based on their estimated probability. But these banks have to, without fail, meet with risk governance and risk modeling criteria. The market and operational risk are also measured in terms of the risk weighted assets in conjecture with the results in the balance sheet. Some of the smaller banks are also required to quantify their interest rate risk in the banking book to make sure that there is no potential for loss arising for the timings and mismatches in the re-pricing of banks funding and lending positions. (Reserve Bank of Australia, 2010)

It is also necessary for all the locally incorporated banks, as per the APRA guidelines on capital requirements, to hold total capital in excess of 8 percent of their risk weighted capital assets. In other words, the banks have to hold capital over and above the 8 percent of their risk

weighted capital assets. Additionally, of the 8 percent, at least more than half, that is, at least more than 4 percent has to be in the necessarily in the Tier 1 capital. The APRA also changes this proportion for individual banks depending on the risk profile of the banks. The Australian Competition and Consumer Commission is also responsible for monitoring fair competition among the banks for the business. (Reserve Bank of Australia, 2010)

In Australia the regulation of banks is also done by the Australian Securities and Investments Commission (ASIC) and also by the Australian Financial Services License (AFS license). The ASIC is the body that issues Australian Financial Services License. In this regard the ASIC has prepared regulatory guide which explains the methods through which it seeks to control financial institutions. ASIC has also prepared regulatory guide 121 for people and companies from overseas who are interested in conducting financial services business in Australia. (Jong, 2004)

Australian Securities and Investments Commission (ASIC) is responsible primarily for the protection of consumers and it has the role to monitor the deposit taking activities of the banks and it, therefore, develops appropriate policies and develops compliance so that the banks can adhere to the code of the banking practice, the credit union code of practice and electronic funds transfer code of practice. ASIC is also responsible for the banks getting streamlined under Financial Services Reform Act, 2001 so that there is proper integration of market integrity and consumer protection across the range of financial services industry into the corporations act, 2001. (Jong, 2004)

The regulatory framework also makes it important for the banks to indulge in transactions that they believe it safe and without any suspect. Further, in the light of such understanding, the

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regulators have made it necessary to record transaction that they believe if skeptical in terms of trying to evade tax or unlawful activities and also to record transactions that is above 10,000 Australian dollars. Further, there have been a series of financial reforms instituted by the regulatory agencies which have attempted to modernize the financial services and banking regime of the country and this has been achieved rather successfully. For example, the government had enacted the financial services reform act way of amendments to the Australian corporations act.

REGULATORY ENVIRONMENT AND LEGAL MATTERS IN AUSTRALIAN BANKS

The Australian Prudential and Regulatory authority looks after the regulatory environment and legal matters in the Australian banks. The banks will have to subject themselves to regular disclosure of capital adequacy norms and of various capital fronts. This should be undertaken a regular interval by the appropriate authority and if found beaching on any level, the banks shall be asked to discontinue its operations. Essentially, this is one of the most fundamental legal checks that are imposed on the banks by the regulatory authority. The disclosure and maintenance of capital according to the Basel norms has been given a very high priority in the banking community in Australia and other countries of the world and is fundamental to a proper functioning of the banking business.

There is no limit in terms of the number or either the volume of transactions. In other words, there is no limit on the amount of money that can be taken in and out of Australia through

the banking system. However, all the banks have to subject themselves in recording certain transactions mentioned under the “Financial transaction reports act 1988” as also in the “Anti money laundering” and in “Counter terrorism financing act.” (Clayton UTZ, 2013)

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Further, all the employees have to contribute a minimum of 9 percent of their wages into a fund that is known as the superannuation. The minimum amount that has to be contributed is 9 percent, however; the employee can contribute in excess of the required 9 percent. This fund is essentially targeted at the retirement benefits and therefore all the employees of the Australian banks have to make this contribution of 9 percent without fail. Failing to make this payment can lead to the authorities imposing a special tax called Superannuation guarantee charge being imposed upon the employer.

Additionally, authorities have laid a very stringent and strict measure for the risk management policies to be followed and pursued religiously by the banks. The risk management and solvency and profitability measure have to meet the standards that have set by the Australian prudential and regulatory norms. Risk management is a highly specialized profession and the authorities and regulators have to see that this activity at the level of banks is taken by the individuals capable of handling the risk management of the banks. This has been a given a very high priority and banks have to be careful in choosing individuals that look into the risk management objectives of it. Further, banks have to also inculcate a sound and honest practice in their profession in all their employees and they have to institute a uniform set of training, competency and other conduct requirement. (legal500, 2013) (cbonline, 2013)

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The statement of financial position has to be made publicly available and all the potential stakeholders of the banks have to have a complete knowledge of the financial position of the

banks. It is very important that the banks make this information available. The auditors are appointed by the Australian Securities and Investments Commission and the auditing has to in accordance to the standards that has been set and it should be followed with absolute honesty in its treatment.

The legal obligation also makes it very clear from the regulators that the banks have to treat the customers with the utmost care and honesty. All the and employees, both from the senior and subordinate levels have to be mindful of their fiduciary duties and are to uphold it at all times in the course of its business. The Australian tax office looks at the tax structures in the banks that has been followed and its tax liabilities are being met in accordance with the stipulated amount. The Australian federal government will look at the tax systems of income, superannuation, and Goods and Services tax. All the other taxes are taken care of by the state government.

Under the financial transaction reports act, the Australian banks have to record transactions that are in excess of 10,000 Australian dollars and also such transactions which they believe to be suspect. The cash dealer should be skeptical about the nature of the transactions and therefore, such transactions are to be recorded in the system. It is important from the perspective of the banks to safeguard their interest in respect of any unlawful nature of banking transactions.

In terms of the operating activities of the government it is essential for the banks to disclose important information to the customers relating to their deposit and their loans. The banks have to keep their customers updated about any changes in its policy and measures that has been implemented by the bank. The customers have to serve very well and for this purpose every bank in their office is supposed to have a separate cell which can look into the grievances

and complaints of the customers. It is very important that the banking business is carried and conducted in a way that looks and protects the interests of the customers and the bank employees are supposed to be very critical of their customer's wellbeing. Failing to do so can attract can heavy fines and penalties to the banks and can even lead to a situation when they have to discontinue its operations and banking activity. (Australian Government; department of foreign afaairs and trade, 2012)

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INFORMATION IN CREDIT REPORT AND THE LEGAL POSITION OF JILL

Nova Bank, which had conducted credit checks on her before the issuance of credit card and a saving account, was interested in seeking out information which would help it decide if they were to issue the credit cards to her. The conduct of the bank was completely justified and within the norms of the regulation issued by the Australian authorities. It was imperative for the bank to have conducted a credit so that there was no room for the prevalence of asymmetric information between the banks and the customer. (Dun & Bradstreet, 2013)

The credit reporting agency does a complete, thorough and full proof check of all the information pertaining to the customer and the information in the credit report is likely to contain complete information about the know-how of the customer.

The credit report firstly in terms of bankruptcy act information is likely to contain the complete contact details of the customer. It has to contain the identity and address of the customer. The identity will include the name of the customer as it appears on the bank book, the date of birth of the customer, the sex of the customer, and also the driver's license of the

customer. Additionally, it will also contain the address history of the customer. The address history is the place where the customer has resided over the course of her relationship with the banks. Further, the report will, most importantly, also contain the employment history of the customer and the employment details of the customer. It is likely to contain all the names of the organization in which the customer has been associated as an employee. (Australian Government, 2013)

Essentially, the report that has been prepared with the help of a credit reporting agency will also contain the history and record of the credit account of the customer with the banks. It will include the credit history of the customer.

In the consumer credit information section the information disclosed will be that of the individuals concerned in taking the loan. This part would contain information as to if the credit was meant to be used for family, domestic or household purposes. However, essentially, the credit report in this section is not supposed to include the amount that was applied or if the credit was sanctioned or disallowed. In the overdue account section of the report it will contain information about the credit intake and outtake of the customer. It will have a recorded history of payment defaults that has been committed by the customer. Further, it will also contain information of the amount that has been completely cleared by the customer in his relationship with the bank. Further, an individual record of such a system will include the reference stating the nature of the amount. It is to be noted in this regard that the overdue account information recorded as payment default remains in the books for a time period of five years. The overdue amount which has been completely paid remains in the individual account section for the next seven years. (Australian Securities and Investments Commission, 2012)

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There is also a commercial credit information section in the credit report of the individual. This section records information about the commercial activities of the customer. This section includes details that the commercial activities of the customer. This section will cover details of the credit that have been sought by the customer or the company of the customer. It will include the current and previous credit record of the customer. It will include the reference and the amount of credit that has been sought for the purpose of commercial activities. In this section the amount that has been categorized as payment default remains in the file for the next five years and the amount that has been categorized as clear out remains in the books for the next seven years. The information include in this section is likely to inform if the commercial activities carried on by the customer was done with honest and fairly in terms of the amount that was sought as credit and the purpose for which the credit was sought for in terms of the commercial activities. (Australian Securities and Investments Commission, 2012)

The report will also contain the public record information of the customer in respect of the loans and credit that has been taken by the customer. The information under this detail will include the capacity that has been undertaken by the customer in respect of his employment and the associated loan proceeding carried on by the company or by the customer on behalf of the company. In particular, it will disclose details of the directorship of the customer with his previous companies. It will also include the company that has been formed by the customer, if any, and of its financial dealing. Further, it will also include any court judgment that has been handed out by the court in regard to any debt and credit that was taken by the company under the leadership of the customer.

The action of the Nova bank limited is completely justified. The legal standing of Jill in respect of Nova's position is not of any substantial degree. Jill cannot proceed against either the

bank or the credit reporting agency because the actions of both were completely in agreement with the law in the land. Nova bank wanted to safeguard against the potential threat of being duped by the customer, in this case, Jill and therefore constituted a probe of the credit history of the customer with the support of credit reporting agency. Jill cannot do anything in terms of legality to undermine the actions of the bank. The bank officials in their right mind wanted to safeguard their interest and loss. The bank did a complete analysis of the record and came to a conclusion that the credit record of Jill was indeed proper and there was no reason to doubt the credit paying potential of the customer or to disapprove his application with Nova bank. Further, Jill had put in his signatures on all the papers and there must have been a clause to allow the bank to conduct a check on his credit history.

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Criterion	Levels of achievement		
	Exemplary	Good	Poor
Writing style and presentation are clear			
<ul style="list-style-type: none"> Title 	<p>Title is concise and informative so readers can anticipate the contents of the contribution and interested people look forward to reading it.</p>	<p>The title gives a general indication of the material covered in the contribution, but have to read the document to fully appreciate what is covered. Some potential readers may be lost because they can't clearly anticipate the material covered by reading the title.</p>	<p>The linkage between the title and the text is not clear. Reader may skip the contribution because they don't appreciate its relevance.</p>
<ul style="list-style-type: none"> Introduction 	<p>Introductory statement clearly indicates the main purpose of the contribution and suggests the plan of organization, so the reader can anticipate the text that will follow.</p>	<p>Introductory statement indicates the main purpose of the contribution in general terms, so the reader has some idea of what will follow.</p>	<p>The introduction does not give an overview of the contribution so the readers are not sure what to expect as they read the text.</p>

<ul style="list-style-type: none"> Main Body 	<p>Main body of contribution makes connected points that clearly build the argument so the text flows from introduction to conclusion in a logical manner, thereby helping the reader to follow the thinking behind the text.</p>	<p>The main body presents a number of points that allow the reader to understand the argument, but lapses in the writing may force the reader to make some connections between the parts.</p>	<p>The text is not well structured so the reader must stop reading at times to try to makes sense of the text.</p>
<ul style="list-style-type: none"> Conclusion 	<p>The main point of the contribution is clearly indicated and reinforced so the reader can clearly remember it.</p>	<p>The main point of the contribution is indicated, but may be stated in an unconvincing manner.</p>	<p>The concluding section does not reinforce or revisit the main point so the reader is unsure about it and likely to misinterpret or forget it.</p>
<ul style="list-style-type: none"> Written expression 	<p>Sentences and paragraphs are well structured and clear so the reader can focus on</p>	<p>Minor lapses in sentence structure, such as run-on sentences and unnecessarily complex sentence structures,</p>	<p>Many sentences are poorly structured so the reader must stop often to reflect on</p>

	what is written. Each paragraph has a topic sentence that indicates the subject matter.	force the reader to pause and reflect on the meaning of the text. Paragraphs present a complete argument, but may not flow so well.	the meaning of the text. Many paragraphs lack topic sentences or have poor flow so the main points and linkages among explanatory text are not clear.
<ul style="list-style-type: none"> Grammar, punctuation and spelling 	Grammar, spelling and punctuation are flawless, which allows the reader to focus on the message.	Some minor errors in grammar, spelling and/or punctuation detract from the quality of the text, but do not impair the communication.	Many errors in grammar, spelling and/or punctuation make reading the text difficult and communication is impaired.
Concepts and arguments are well developed			
<ul style="list-style-type: none"> Accuracy 	All information is accurately reported using appropriate terminology	The information is largely accurate but imprecise language could lead a reader to misinterpret aspects of the text.	Although the gist of the information is correct, there are problems with the interpretation of it.

	so the information is reliable.		A reader can be misled by the text.
• Relevance	Connections between the contribution and the main topic of the discussion are clearly indicated.	Connections between the contribution and the main topic of the discussion are indicated or implied, but the reader needs to pause to clarify those connections.	Although the text is relevant, this is not clearly indicated, so the reader must guess how the text relates to the main topic.
• Significance	The reason why the contribution is important to the overall discussion is clearly described and discussed so the reader takes the contribution seriously.	The reason why the contribution is important is touched on but not elucidated, so the reader must make some interpretations about the author's view of the contribution's significance.	The contribution may include significant material but this is not indicated, so the reader must guess it.
• Clarity	The main points and new technical terms are clearly described and/or explained so the reader is	Although the text is clear to informed audiences, unexplained points may leave room for alternative interpretations of the text.	Key points and new technical terms are not explained so the reader is confused.

	left with no ambiguity about what was written.		
• Independence	The contribution is completely self-contained so the reader does not have to read other contributions or published materials to understand what was written about.	The text is sufficiently clear that the reader can understand the main point without further reading, but some parts of the text are not clear without consulting earlier contributions or other sources of information.	The text is written in a manner that presumes considerable prior knowledge, so the reader must have a thorough knowledge of what has been written about the subject in order to understand the main point of the contribution.
Contribution is responsive to another contribution	The writer links ideas submitted by others to their own contribution in a manner that substantially strengthens the group's efforts to resolve the main	The writer makes references to earlier works that are a starting point for new ideas but, apart from the reference to the earlier work, not much information is incorporated	The text mentions other contributions but neither explains the reference nor substantially adds to it, so there is no clear benefit to the

	<p>problem. This linkage can include elaboration of what was previously written, a critique or questioning of it, demonstration of linkages among two or more earlier contributions, and/or utilization of an earlier contribution as a foundation to build your own.</p>		<p>resolution of the main problem from citing the earlier contribution.</p>
<p>Text is supported by references</p>			
<ul style="list-style-type: none"> Sources indicated 	<p>All information and ideas that are not commonly known are supported with references to sources, so the reader has confidence that the information is not based on hearsay or</p>	<p>Most sources are indicated, but in only a few cases the sources are not given or are ambiguous, so the reader has to check some of the sources.</p>	<p>Sources are cited for some specific parts of the contribution, but no references are supplied for information and ideas that are</p>

	<p>the writer's opinion or assumptions alone.</p>		<p>clearly not the author's, so the reader has no idea of the validity and authority of the information.</p>
<ul style="list-style-type: none"> • Relevant references 	<p>Information, concepts and opinions are supported with references to published literature, especially primary (original) sources of information, rather than review articles or textbooks. This allows the reader to independently review the cited sources. More than one reference is cited to support key points, which adds</p>	<p>One or a few references are used to support the text. Thus the contribution is supported but this may be an idiosyncratic source. Some general references to textbooks are made that could have been replaced by primary references which are more thorough and authoritative.</p>	<p>Information comes from Web sites or other sources that have no recognized authority, so the validity or strength of the source is unknown.</p>

	strength and authority to the argument.		
• Citation style	References cited appropriately in the text, and the correct format is used in the text when citing information, so the reader clearly knows which information is attributable to which source.	Minor lapses in citation format do not prevent the reader from finding the sources in the reference list at the end of the contribution.	Citation format incorrect or poorly placed in the text, so citations distract from reading.
• Bibliographic information	The reference list contains complete bibliographic information (author's name(s), publication date, title, source, date web page accessed), so a reader can easily find the references for their own research. The authority of sources can be	Bibliographic information largely complete, but some information missing so the reader may have difficulty finding some references. Most sources can still be easily checked.	Not all references are listed, information in the reference list is incorrect, or important information is missing from the reference list, so the reader is unable to find the same

	evaluated by checking them.		sources of information and the authority of sources is almost entirely unknown.
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Faculty Comments:

The assignment has been very well written and all demanded aspects covered. Efforts can be seen in presenting diversely collected facts. But they are just touched upon. The requirement would better suffice with an elucidation made in this regard.