



## **Prudential Standard APS 510**

### **Governance**

#### **Objectives and key requirements of this Prudential Standard**

The ultimate responsibility for the sound and prudent management of authorised deposit-taking institutions and authorised non-operating holding companies rests with their Board of directors. It is essential that regulated institutions have a sound governance framework and conduct their affairs with a high degree of integrity.

A culture that promotes good governance is of benefit to all stakeholders of a regulated institution and helps to maintain public confidence in the institution.

This Prudential Standard sets out minimum foundations for good governance of regulated institutions. It aims to ensure that regulated institutions are managed in a sound and prudent manner by a competent Board of directors, which is capable of making reasonable and impartial business judgements in the best interests of the regulated institution and which gives due consideration to the impact of its decisions on depositors.

The governance arrangements of regulated institutions build on these foundations in ways that take account of the size, complexity and risk profile of the institution.

The key requirements of this Prudential Standard include:

- specific requirements with respect to Board size and composition;
- the chairperson of the Board must be an independent director;
- a Board Audit Committee must be established;
- regulated institutions must have a dedicated internal audit function;
- certain provisions dealing with independence requirements for auditors consistent with those in the *Corporations Act 2001*; and
- the Board must have a Remuneration Policy that aligns remuneration and risk management;
- a Board Remuneration Committee must be established; and
- the Board must have a policy on Board renewal and procedures for assessing Board performance.

A number of requirements also apply to foreign authorised deposit-taking institutions.

## Authority

1. This Prudential Standard is made under s11AF of the *Banking Act 1959* (**the Act**).

## Application

2. This Prudential Standard applies to all authorised deposit-taking institutions (**ADIs**) and authorised non-operating holding companies (**authorised NOHCs**) under the Act. ADIs and authorised NOHCs are collectively referred to as **regulated institutions** in this Prudential Standard. All regulated institutions (except foreign ADIs)<sup>1</sup> have to comply with this Prudential Standard in its entirety.
3. Foreign ADIs have to comply with only those provisions of this Prudential Standard which specifically indicate that they apply to foreign ADIs. The obligations imposed by this Prudential Standard, on or in relation to foreign ADIs, only apply in relation to its Australian business.

## The Board and senior management

4. The Board of directors (**the Board**) of a regulated institution is ultimately responsible for the sound and prudent management of the regulated institution. This Prudential Standard sets out the minimum requirements that a regulated institution must meet in the interests of promoting strong and effective governance.
5. The Board of a regulated institution must have a formal charter that sets out the roles and responsibilities of the Board.
6. The Board, in fulfilling its functions, may delegate authority to management to act on behalf of the Board with respect to certain matters, as decided by the Board. This delegation of authority must be clearly set out and documented. The Board must have mechanisms in place for monitoring the exercise of delegated authority. The Board cannot abrogate its responsibility for functions delegated to management.
7. The Board must ensure that directors and senior management of the regulated institution, collectively, have the full range of skills needed for the effective and prudent operation of the regulated institution, and that each director has skills that allow them to make an effective contribution to Board deliberations and processes. This includes the requirement for directors, collectively, to have the necessary skills, knowledge and experience to understand the risks of the regulated institution, including its legal and prudential obligations, and to ensure that the regulated institution is managed in an appropriate way taking into account these risks. This does not preclude the Board from supplementing its skills and knowledge through the use of external consultants and experts.

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<sup>1</sup> For the definition of 'foreign ADI' refer to section 5 of the *Banking Act 1959* (**the Act**).

8. Senior management of the regulated institution (and senior management of a foreign ADI), with responsibilities relating to the business in Australia, must be ordinarily resident in Australia.
9. Members of the Board and senior management (and senior management of a foreign ADI) must be available to meet with APRA on request.
10. The Board (or, in the case of a foreign ADI, the senior officer outside Australia with delegated authority from the Board (**senior officer outside Australia**)<sup>2</sup>) must provide the external auditor of the regulated institution (including a foreign ADI) with the opportunity to raise matters directly with the Board (or, in the case of a foreign ADI, the senior officer outside Australia).

### **Independence**

11. For the purposes of this Prudential Standard, an independent director is a non-executive director who is free from any business or other association – including those arising out of a substantial shareholding, involvement in past management or as a supplier, customer or adviser – that could materially interfere with the exercise of their independent judgement. The circumstances that will not meet this test of independence include, but are not limited to, those set out in Attachment A.
12. If the Board of a regulated institution is in doubt regarding a director's independence, the regulated institution may refer the matter to APRA for guidance.

### **Definition of non-executive director**

13. For the purposes of this Prudential Standard, a reference to **non-executive director** is to be interpreted as meaning a director who is not a member of management.

### **Senior officer outside Australia (foreign ADIs)**

14. As in the case of locally-incorporated ADIs, the ultimate responsibility for the safety and soundness of a foreign ADI resides with its Board. Foreign ADIs must nominate a senior officer (whether a director or senior executive) outside Australia with delegated authority from the Board who will be responsible for overseeing the Australian branch operation.

### **Board composition**

15. The Board of a regulated institution must have a minimum of five directors at all times.

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<sup>2</sup> Refer to paragraph 14 for the definition of senior officer outside Australia with delegated authority from the Board.

16. The Board must have a majority of independent directors at all times. For regulated institutions that are subsidiaries<sup>3</sup> of other APRA-regulated institutions or overseas equivalents,<sup>4</sup> exceptions may apply as set out at paragraphs 27 to 29. For regulated institutions that are subsidiaries of a parent company that is not prudentially regulated, exceptions may apply as set out at paragraph 30.
17. The chairperson of the Board must be an independent director of the regulated institution.
18. A majority of directors present and eligible to vote at all Board meetings must be non-executives.
19. The chairperson of the Board cannot have been the Chief Executive Officer (**CEO**) of the regulated institution at any time during the previous three years. If the position of the CEO is unexpectedly vacated, the chairperson may serve as an interim CEO. After a period of 90 days, approval must be sought from APRA to allow this arrangement to continue.
20. The chairperson must be available to meet with APRA on request.
21. For locally-owned and incorporated regulated institutions, a majority of directors must be ordinarily resident in Australia.
22. For foreign-owned locally incorporated regulated institutions, at least two of the directors must be ordinarily resident in Australia, at least one of whom must also be independent.
23. For foreign ADIs, in addition to the requirement to have a senior officer outside Australia with delegated authority from the Board who is responsible for overseeing the Australian branch operation, there must be a senior manager<sup>5</sup> in Australia responsible for the local operation who is ordinarily resident in Australia.
24. Board representation must be consistent with a regulated institution's shareholding. Where a shareholding constitutes not more than 15% of a regulated institution's voting shares, there should not be more than one Board member who is an **associate** of the shareholder where the Board has up to six directors, and not more than two Board members who are associates of the shareholder where the Board has seven or more directors. A director is taken to be an associate of a shareholder for the purposes of this clause, if the director is an associate of the shareholder, or the shareholder is an associate of the director, according to the definition of associate in clause 4 of Schedule 1 of the *Financial Sector (Shareholdings) Act 1998*. That definition is to be applied for the purposes of this clause as if subparagraph (1)(l) of that definition were omitted.

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<sup>3</sup> 'Subsidiary' means a subsidiary within the meaning of the *Corporations Act 2001* (**Corporations Act**).

<sup>4</sup> An 'overseas equivalent' is one which is not authorised in Australia but is authorised and subject to prudential regulation in a foreign country.

<sup>5</sup> 'Senior manager' is defined in *Prudential Standard APS 520 Fit and Proper* (**APS 520**).

25. Where an individual shareholding is greater than 15%, as approved under the *Financial Sector (Shareholdings) Act 1998*, the Board representation of that shareholding can be greater than allowed in paragraph 24, although it must still be broadly proportionate to the shareholding concerned.<sup>6</sup>
26. For ADIs that operate as special service providers, the ADI may apply to APRA, in writing, for approval for alternative Board composition arrangements that meet the objectives of this Prudential Standard. APRA may approve alternative arrangements for the ADI if satisfied that those arrangements will, in APRA's opinion, achieve the objectives of this Prudential Standard.

### **Regulated institutions that are subsidiaries of other APRA-regulated institutions or overseas equivalents**

27. For a regulated institution that is a subsidiary of another APRA-regulated institution or an overseas equivalent, the Board of the regulated institution must have a majority of non-executive directors, but these non-executive directors need not all be independent. They can include Board members or senior management of the parent company or its subsidiaries, but not executives of the regulated institution or its subsidiaries.
28. A regulated institution to which paragraph 27 applies will be required to have, at a minimum, two independent directors, in addition to an independent chairperson, where the Board has up to seven members. Where the Board has more than seven members, the regulated institution will be required to have at least three independent directors, in addition to an independent chairperson.
29. For the purposes of meeting the requirements in paragraph 28, the independent directors on the Board of the parent company or its other subsidiaries can also sit as independent directors on the Board of the regulated institution.

### **Subsidiaries with a parent that is not prudentially regulated**

30. For a regulated institution that is a subsidiary of another entity, not covered by the arrangements in paragraphs 27 to 29 of this Prudential Standard, the Board must have a majority of independent directors. However, independent directors on the Board of the parent company or its other subsidiaries can also sit as independent directors on the Board of the regulated institution.

### **Regulated institutions that are part of a corporate group**

31. Where a regulated institution is part of a corporate group<sup>7</sup> (**group**) and the regulated institution utilises group policies or functions, the Board of the regulated institution must ensure that these policies and functions give appropriate regard to the regulated institution's business and its specific requirements.

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<sup>6</sup> Note, where the proportionate shareholding does not equate to a whole number, it can be rounded to the nearest whole number.

<sup>7</sup> A 'corporate group' comprises more than one company that are related bodies corporate within the meaning of section 50 of the Corporations Act.

## Joint ventures

32. For the purposes of this Prudential Standard, a regulated institution that operates as a joint venture can be considered as part of the group of each parent entity. Independent directors of a parent can sit as independent directors on the Board of the joint venture entity. However, the general concessions available to subsidiaries in paragraphs 27 to 29 will not be available to joint ventures.

## Remuneration Policy

33. A regulated institution (including a foreign ADI) must establish and maintain a written Remuneration Policy. The Remuneration Policy must outline the remuneration objectives and the structure of the remuneration arrangements, including but not limited to the performance-based remuneration components, of the regulated institution.
34. The Remuneration Policy must be approved by the Board or, for a foreign ADI, by the senior officer outside Australia with delegated authority from the Board.
35. For the purposes of this Prudential Standard, remuneration arrangements include measures of performance, the mix of forms of remuneration (such as fixed and variable components, and cash and equity-related benefits) and the timing of eligibility to receive payments. All forms of remuneration are captured by this Prudential Standard.
36. In addition to any other objectives, the Remuneration Policy's performance-based components of remuneration must be designed to encourage behaviour that supports:
  - (a) the regulated institution's long-term financial soundness; and
  - (b) the risk management framework of the regulated institution.
37. The performance-based components of remuneration must be designed to align remuneration with prudent risk-taking and must incorporate adjustments to reflect:
  - (a) the outcomes of business activities;
  - (b) the risks related to the business activities taking account, where relevant, of the cost of the associated capital; and
  - (c) the time necessary for the outcomes of those business activities to be reliably measured.
38. The Remuneration Policy must provide for the Board or, for a foreign ADI, the senior officer outside Australia, to adjust performance-based components of remuneration downwards, to zero if appropriate, in relation to persons or classes of persons, if such adjustments are necessary to:
  - (a) protect the financial soundness of the regulated institution; or

- (b) respond to significant unexpected or unintended consequences that were not foreseen by the Board Remuneration Committee or, for a foreign ADI, the senior officer outside Australia.
39. The Remuneration Policy must set out who is covered by the Policy. The Remuneration Policy must cover, as a minimum:
- (a) each responsible person, as that term is defined in APS 520, excluding responsible auditors, non-executive directors and, in the case of a foreign ADI, the senior officer outside Australia;
  - (b) persons whose primary role is risk management, compliance, internal audit or financial control (collectively “risk and financial control personnel”); and
  - (c) all other persons for whom a significant portion of total remuneration is based on performance and whose activities, individually or collectively, may affect the financial soundness of the institution.

A person will be included within one of the above categories if that person is: employed directly by the regulated institution; retained directly by the regulated institution under contract; employed by, or a contractor of, a body corporate (including a service company) that is a related body corporate of the regulated institution; or, subject to paragraph 40, an entity that is not a related body corporate of the regulated institution.

40. The Remuneration Policy must cover a service contract between a regulated institution and an entity that is not a related body corporate of the regulated institution, if:
- (a) the primary role of the entity is to provide risk management, compliance, internal audit or financial control services to the regulated institution; or
  - (b) the services provided by the entity, either individually or collectively with like services provided by other entities, may affect the financial soundness of the regulated institution and, under the services contract with the regulated institution, a significant portion of the total payment to the entity is based on performance.

However, the Remuneration Policy need not cover a service contract with such an entity if:

- (i) the regulated institution’s risk management framework explicitly addresses the structure of payments to entities of the relevant kind and the risk that payment incentives can give rise to inappropriate behaviour; and
- (ii) oversight of this risk has been delegated to a Board Committee or, in the case of a foreign ADI, the senior officer outside Australia.

41. APRA may determine in writing that an individual or class of individuals must be covered by the regulated institution's Remuneration Policy. APRA will notify such a determination to the regulated institution.
42. The Remuneration Policy must prohibit persons covered by paragraph 39(a), who receive equity or equity-linked deferred remuneration from hedging their economic exposures to the resultant equity price risk before the equity-linked remuneration is fully vested and able to be sold for cash by the recipient. The Remuneration Policy must specify the actions to be taken where a person is found to have breached this requirement.
43. The Remuneration Policy must ensure that the structure of the remuneration of risk and financial control personnel, including performance-based components if any, does not compromise the independence of these personnel in carrying out their functions.
44. If a regulated institution utilises a group Remuneration Policy, in terms of paragraph 31 of this Prudential Standard, its Board (or, in the case of a foreign ADI, the senior officer outside Australia) must ensure that the group Remuneration Policy, modified as necessary for the regulated institution, meets the requirements set out in this Prudential Standard for the regulated institution. (For the avoidance of doubt, paragraph 31 of this Prudential Standard applies to foreign ADIs for the purpose of group Remuneration Policies).
45. The Remuneration Policy must form part of a regulated institution's risk management system as required under *Prudential Standard APS 310 Audit and Related Matters*.
46. The Remuneration Policy must be provided to APRA on request.

### **Board Remuneration Committee**

47. A regulated institution (other than a foreign ADI) must, unless otherwise approved in writing by APRA, have a Board Remuneration Committee that complies with the requirements of this Prudential Standard.
48. The Board Remuneration Committee must have at least three members. All members of the Committee must be non-executive directors of the regulated institution. A majority of the members of the Committee must be independent. The chairperson of the Committee must be an independent director of the regulated institution.
49. The Board Remuneration Committee must have a written charter and terms of reference that outline the Committee's roles, responsibilities and terms of operation. The Remuneration Committee must be provided with the powers necessary to enable it to perform its functions.
50. The responsibilities of the Board Remuneration Committee must include:
  - (a) conducting regular reviews of, and making recommendations to the Board on, the Remuneration Policy. This must include an assessment of the

Remuneration Policy's effectiveness and compliance with the requirements of this Prudential Standard;

- (b) making annual recommendations to the Board on the remuneration of the Chief Executive Officer (CEO), direct reports of the CEO, other persons whose activities may in the Board Remuneration Committee's opinion affect the financial soundness of the institution, and any other person specified by APRA; and
  - (c) making annual recommendations to the Board on the remuneration of the categories of persons covered by the Remuneration Policy (other than those persons for whom such recommendations are already required under paragraph 50(b)).
51. The Board Remuneration Committee, or in the case of a foreign ADI, the senior officer outside Australia, must:
- (a) have free and unfettered access to risk and financial control personnel and other parties (internal and external) in carrying out its duties; and
  - (b) if choosing to engage third-party experts, have power to do so in a manner that ensures that the engagement, including any advice received, is independent.
52. Where a regulated institution is part of a corporate group, the Board of the regulated institution may use a group Board Remuneration Committee in order to meet the requirements of paragraph 47 of this Prudential Standard, provided that the other requirements set out in this Prudential Standard are met and the Board of the regulated institution has unfettered access to the group Board Remuneration Committee.
53. For foreign ADIs, the senior officer outside Australia must:
- (a) conduct regular reviews of, and make decisions in relation to, the Remuneration Policy. This must include an assessment of the Remuneration Policy's effectiveness and compliance with the requirements of this Prudential Standard;
  - (b) make annual decisions on the remuneration of the Head of the Australian branch operation, direct reports to that person, other persons whose activities may in the opinion of the senior officer outside Australia affect the financial soundness of the institution, and any other person specified by APRA;
  - (c) make annual decisions on the remuneration of the categories of persons covered by the Remuneration Policy (other than those persons for whom such recommendations are already required under paragraph 53(b)).
54. Members of the Board Remuneration Committee must be available to meet with APRA on request.

## Board Audit Committee

55. A regulated institution must have a Board Audit Committee, which assists the Board by providing an objective non-executive review of the effectiveness of the regulated institution's financial reporting and risk management framework unless, with respect to risk management, there is another Board Committee which carries out this function. The Board Audit Committee must have sufficient powers to enable it to obtain all information necessary for the performance of its functions.
56. The Board Audit Committee must have at least three members. All members of the Committee must be non-executive directors of the regulated institution. A majority of the members of the Committee must be independent.
57. The chairperson of the Board Audit Committee must be an independent director of the regulated institution.
58. The chairperson of the Board can sit on the Board Audit Committee, but cannot chair the Committee.
59. The Board Audit Committee must have a charter that includes a reference to the fact that the Committee is responsible for the oversight of APRA statutory reporting requirements, as well as other financial reporting requirements, professional accounting requirements, internal and external audit, and the appointment of the regulated institution's external auditor.
60. The Board Audit Committee must review the external auditor's engagement at least annually, including making an assessment of whether the auditor meets the Audit Independence tests set out in *APES 110 Code of Ethics for Professional Accountants*,<sup>8</sup> as well as the additional auditor independence requirements set out in this Prudential Standard. For a foreign ADI, it will be the responsibility of the senior officer outside Australia to undertake this assessment.
61. The Board Audit Committee must regularly review the internal and external audit plans, ensuring that they cover all material risks and financial reporting requirements of the regulated institution. It must also regularly review the findings of audits, and ensure that issues are being managed and rectified in an appropriate and timely manner.
62. The Board Audit Committee must ensure the adequacy and independence of both the internal and external audit functions.
63. The members of the Board Audit Committee must, at all times, have free and unfettered access to senior management, the internal auditor, the heads of all risk management functions and the regulated institution's external auditor, and vice versa.
64. The Board Audit Committee must establish and maintain policies and procedures for employees of the regulated institution to submit, confidentially,

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<sup>8</sup> *APES 110 Code of Ethics for Professional Accountants* was issued by the Accounting Professional and Ethical Standards Board with effect from 1 July 2006.

information about accounting, internal control, compliance, audit, and other matters about which the employee has concerns. The Committee should also have a process for ensuring employees are aware of these policies and for dealing with matters raised by employees under these policies.

65. Members of the Board Audit Committee must be available to meet with APRA on request.
66. The Board Audit Committee must invite the regulated institution's external auditor to meetings of the Committee.
67. The internal auditor must have a reporting line and unfettered access to the Board Audit Committee. For foreign ADIs, the auditor of the local operation must have direct access to the Head Office audit function.

### Internal audit

68. A regulated institution (including a foreign ADI in relation to its Australian business) must have an independent and adequately resourced internal audit function. If a regulated institution does not believe it is necessary to have a dedicated internal audit function, it must apply to APRA, in writing, seeking an exemption from this requirement, and set out reasons why it believes it should be exempt. APRA may approve alternative arrangements for a regulated institution where APRA is satisfied that they will achieve the same objectives.
69. The objectives of the internal audit function must include evaluation of the adequacy and effectiveness of the financial and risk management framework of the regulated institution (including a foreign ADI). To fulfil its functions, the internal auditor must, at all times, have unfettered access to all the regulated institution's business lines and support functions.

### Auditor independence

70. The *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* introduced a number of new requirements into the *Corporations Act 2001* (**Corporations Act**) in relation to auditor independence. The auditor independence requirements in this Prudential Standard are substantially consistent with those requirements, and are intended to help ensure the independence of an auditor engaged to perform work of a prudential nature in relation to the Act, the Prudential Standards and the Reporting Standards.<sup>9</sup>
71. The Board of an ADI (and the senior officer outside Australia in the case of a foreign ADI) must, to the extent practical, undertake steps to satisfy themselves that the auditor, who undertakes work for the ADI (or foreign ADI) in relation to the Act, the Prudential Standards or the Reporting Standards, is independent of the ADI (or foreign ADI),<sup>10</sup> and that there is no conflict of interest situation

<sup>9</sup> Reporting Standards are those standards made under the *Financial Sector (Collection of Data) Act 2001*.

<sup>10</sup> 'Independent of the ADI (or foreign ADI)' means that the auditor has been assessed as independent in terms of paragraph 60 of this Prudential Standard.

that could compromise, or be seen to compromise, the independence of the auditor.

72. As part of the process of ascertaining the independence of the auditor, an ADI (including a foreign ADI) must obtain a declaration from the auditor to the effect that the auditor is independent, both in appearance and in fact, and has no conflict of interest situation, and that there is nothing to the auditor's knowledge (either in relation to the individual auditor or any audit firm or audit company of which the auditor is a member or director) that could compromise that independence.
73. For the purposes of this Prudential Standard, a conflict of interest situation exists in relation to an ADI (or foreign ADI) at a particular time, if because of circumstances that exist at that time:
- (c) the auditor is not capable of exercising objective and impartial judgement in relation to the conduct of the work that is undertaken for the ADI (or foreign ADI) in relation to the Act, the Prudential Standards or the Reporting Standards; or
  - (d) a reasonable person, with full knowledge of all relevant facts and circumstances, would conclude that the auditor is not capable of exercising objective and impartial judgement in relation to undertaking the work for the ADI (or foreign ADI) for the purposes of the Act, the Prudential Standards, or the Reporting Standards.<sup>11</sup>
74. A person, who was a member of an audit firm or a director of an audit company, and who served in a professional capacity in the audit of an ADI (including a foreign ADI) in relation to the Act, the Prudential Standards or the Reporting Standards, cannot be appointed to the role of director or senior manager of that ADI until at least two years have passed since they served in that professional capacity.
75. A person, who was an employee of an audit company, other than a director of that company, and who acted as the lead auditor<sup>12</sup> or review auditor<sup>13</sup> in the audit of an ADI (including a foreign ADI) in relation to the Act, the Prudential Standards or the Reporting Standards, cannot be appointed to the role of director or senior manager of that ADI until at least two years have passed since they acted as the lead auditor or review auditor.

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<sup>11</sup> This definition is based on that used in the Corporations Act to describe the circumstances under which a conflict of interest situation is considered to exist, and is intended to be interpreted in a similar manner. Without limiting the situations that may cause a conflict to arise for the purposes of this Prudential Standard, it is expected that any circumstances of the type that would lead to a breach of the Corporations Act requirements for audit independence, whether or not these provisions actually apply in relation to the audit of the ADI (including a foreign ADI), will also result in a breach of the provisions of this Prudential Standard.

<sup>12</sup> 'Lead auditor' means the registered company auditor who is primarily responsible to the audit firm or the audit company for the conduct of audit work conducted in relation to the Act, the Prudential Standards or the Reporting Standards.

<sup>13</sup> 'Review auditor' means the registered company auditor (if any) who is primarily responsible to the individual auditor, the audit firm or the audit company for reviewing audit work conducted in relation to the Act, the Prudential Standards or the Reporting Standards.

76. A person cannot be appointed as a director or senior manager of an ADI (or a senior manager in the case of a foreign ADI) if:
- (a) the person was, or is, a director of the audit company or a member of the audit firm that was, or is, responsible for the audit of the ADI in relation to the Act, the Prudential Standards or the Reporting Standards; and
  - (b) there is already another person employed as a director or senior manager of the ADI who was a director of the audit company or a member of the audit firm, at a time when the audit company or audit firm undertook an audit of the ADI at any time during the previous two years.
77. An individual who plays a significant role<sup>14</sup> in the audit of an ADI (including a foreign ADI) in relation to the Act, the Prudential Standards or the Reporting Standards, for five successive years, or for more than five years out of seven successive years, cannot continue to play a significant role in the audit until at least a further two years have passed, except with an exemption from APRA. APRA may grant an exemption from this requirement if the individual provides specialist services that are otherwise not readily available or there are no other registered company auditors available to provide satisfactory services for the ADI.

### **Board performance assessment**

78. The Board of a regulated institution must have procedures for assessing, at least annually, the Board's performance relative to its objectives. It must also have in place a procedure for assessing, at least annually, the performance of individual directors.

### **Board renewal**

79. The Board of a regulated institution must have in place a formal policy on Board renewal. This policy must provide details of how the Board intends to renew itself in order to ensure it remains open to new ideas and independent thinking, while retaining adequate expertise. The policy must give consideration to whether directors have served on the Board for a period which could, or could reasonably be perceived to, materially interfere with their ability to act in the best interests of the regulated institution.

### **Persons not to be constrained from providing information to APRA<sup>15</sup>**

80. No prospective, current or former officer,<sup>16</sup> employee or contractor (including professional service provider) of a regulated institution (including a foreign

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<sup>14</sup> For the purpose of this paragraph 'an individual who plays a significant role' means an individual auditor who acts as the auditor in respect of any of the requirements of the Act, the Prudential Standards or the Reporting Standards, or the lead or review auditor where such audit work is performed by an audit company or audit firm.

<sup>15</sup> Also refer to the provisions for the protection of whistleblowers in Part VIA of the Act and the whistleblowing provisions in APS 520.

<sup>16</sup> 'Officer' is defined in section 9 of the Corporations Act.

ADI) may be constrained or impeded, whether by confidentiality clauses or other means, from disclosing information to APRA, from discussing issues with APRA of relevance to the management and prudential supervision of the regulated institution, or from providing documents under their control to APRA, that may be relevant in the context of the management or prudential supervision of the regulated institution. Such persons are not to be constrained or impeded from providing information to auditors, and others, who have statutory responsibilities in relation to the regulated institution.

81. Regulated institutions (including foreign ADIs) must ensure that their internal policy and contractual arrangements do not explicitly or implicitly restrict or discourage auditors or other parties from communicating with APRA.

### **Commencement and transitional arrangements**

82. This Prudential Standard commences on 1 April 2010.
83. Upon commencement of this Prudential Standard, the existing governance requirements contained in *Prudential Standard APS 510 Governance* will cease to have effect.
84. A regulated institution may be unable to comply immediately with some requirements in paragraphs 33 to 54 of this Prudential Standard, relating to Remuneration, due to the need to impose or negotiate appropriate terms and conditions in employment and service contracts. If the regulated institution has notified APRA of this matter, in writing, prior to the commencement of this Prudential Standard, providing all relevant details, those particular requirements do not apply to that regulated institution on commencement of this Prudential Standard. However, those requirements will apply to the regulated institution as soon as the appropriate terms and conditions can be imposed or negotiated, and in any event no later than 31 March 2013.

### **Adjustments and exclusions**

85. APRA may by notice in writing to a regulated institution adjust or exclude a specific prudential requirement in this Prudential Standard in relation to that regulated institution.<sup>17</sup>

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<sup>17</sup> Refer to subsection 11AF(2) of the Act.

## Attachment A<sup>18</sup>

A director is not independent if the director:

1. is a substantial shareholder<sup>19</sup> of the regulated institution or an officer of, or otherwise associated directly with, a substantial shareholder of the regulated institution;
2. is employed, or has previously been employed in an executive capacity by the regulated institution or another group member, and there has not been a period of at least three years between ceasing such employment and serving on the Board;
3. has within the last three years been a principal of a material professional adviser or a material consultant to the regulated institution or another group member, or an employee materially associated with the service provided;
4. is a material supplier or customer of the regulated institution or other group member, or an officer of or otherwise associated directly or indirectly with a material supplier or customer; or
5. has a material contractual relationship with the regulated institution or another group member other than as a director.

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<sup>18</sup> The following circumstances are adapted from the guidance on “Relationships affecting independent status” to be considered by a Board when determining the independent status of a director set out in Box 2.1 of the *ASX Corporate Governance Principles and Recommendations* (2<sup>nd</sup> Edition).

<sup>19</sup> For the purpose of this Attachment, a ‘substantial shareholder’ is a person with a substantial holding as defined in section 9 of the Corporations Act.