



Prudential Standard LPS 510

Governance

Objectives and key requirements of this Prudential Standard

The ultimate responsibility for the sound and prudent management of life companies rests with their Board of directors. It is essential that life companies 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 life company and helps to maintain public confidence in the institution.

This Prudential Standard sets out minimum foundations for good governance of life companies. It aims to ensure that life companies 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 life company and which gives due consideration to the impact of its decisions on policyholders.

The governance arrangements of life companies 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;
- life companies must have a dedicated internal audit function;
- certain provisions dealing with independence requirements for auditors consistent with those in the *Corporations Act 2001*;
- 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 eligible foreign life insurance companies.

Authority

1. This Prudential Standard is made under subsection 230A(1) of the *Life Insurance Act 1995* (**the Act**).

Application

2. This Prudential Standard applies to all life companies, including friendly societies, registered under the Act.
3. Eligible foreign life insurance companies (**EFLICs**) have to comply with only those provisions of this Prudential Standard which specifically indicate that they apply to EFLICs.¹ The obligations imposed by this Prudential Standard, on or in relation to an EFLIC, only apply in relation to its Australian business. Attachment B to this Prudential Standard applies specifically to EFLICs.

The Board and senior management

4. The Board of directors (**the Board**) of a life company is ultimately responsible for the sound and prudent management of the life company. This Prudential Standard sets out the minimum requirements that a life company must meet in the interests of promoting strong and effective governance.
5. The Board of a life company 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 life company, collectively, have the full range of skills needed for the effective and prudent operation of the life company, 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 life company, including its legal and prudential obligations, and to ensure that the life company 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.

¹ An eligible foreign life insurance company (**EFLIC**) is one within the meaning of section 16ZD of the Act.

8. Senior management of the life company (and senior management of an EFLIC), 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 the EFLIC) must be available to meet with APRA on request.
10. The Board must provide the Auditor and the Appointed Actuary² of the life company with the opportunity to raise matters directly with the Board (the Compliance Committee for an EFLIC).³

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 life company is in doubt regarding a director's independence, the life company 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.

Board composition

14. The Board of a life company must have a minimum of five directors at all times.
15. The Board must have a majority of independent directors at all times. For life companies that are subsidiaries⁴ of other APRA-regulated institutions or overseas equivalents,⁵ exceptions may apply as set out at paragraphs 24 to 26. For life companies that are subsidiaries of a parent company that is not prudentially regulated, exceptions may apply as set out at paragraph 27.
16. The chairperson of the Board must be an independent director of the life company.

² The Auditor is appointed as required under section 83 of the Act. The Appointed Actuary is appointed as required under section 93 of the Act. Refer also to *LPS 310 Audit and Actuarial Requirements* and *LPS 520 Fit and Proper (LPS 520)* for eligibility criteria.

³ As defined in section 16ZF of the Act.

⁴ 'Subsidiary' means a subsidiary within the meaning of the *Corporations Act 2001 (Corporations Act)*.

⁵ An overseas equivalent is one which is not authorised in Australia but is authorised and subject to prudential regulation in a foreign country.

17. A majority of directors present and eligible to vote at all Board meetings must be non-executives.
18. The chairperson of the Board cannot have been the Chief Executive Officer (**CEO**) of the life company 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.
19. The chairperson must be available to meet with APRA on request.
20. For locally-owned and incorporated life companies, a majority of directors must be ordinarily resident in Australia.
21. For foreign-owned locally incorporated life companies at least two of the directors of the life company must be ordinarily resident in Australia, at least one of whom must also be independent.
22. Board representation must be consistent with a life company's shareholding. Where a shareholding constitutes not more than 15% cent of a life company'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.
23. 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 22, although it must still be broadly proportionate to the shareholding concerned.⁶

Life companies that are subsidiaries of other APRA-regulated institutions or overseas equivalents

24. For a life company that is a subsidiary of another APRA-regulated institution or an overseas equivalent, the Board of the life company 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 life company or its subsidiaries.
25. A life company to which paragraph 24 applies will be required to have, at a minimum, two independent directors, in addition to an independent chairperson,

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

where the Board has up to seven members. Where the Board has more than seven members, the life company will be required to have at least three independent directors, in addition to an independent chairperson.

26. For the purposes of meeting the requirements in paragraph 25, 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 life company.

Subsidiaries with a parent that is not prudentially regulated

27. For a life company that is a subsidiary of another entity, not covered by the arrangements in paragraphs 24 to 26 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 life company.

Life companies that are part of a corporate group

28. Where a life company is part of a corporate group⁷ (**group**), and the life company utilises group policies or functions, the Board of the life company must ensure that these policies and functions give appropriate regard to the life company's business and its specific requirements.

Joint ventures

29. For the purposes of this Prudential Standard, a life company 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 24 to 26 will not be available to joint ventures.

Remuneration Policy

30. A life company (including an EFLIC) 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 life company.
31. The Remuneration Policy must be approved by the Board or, for an EFLIC, by the Compliance Committee with delegated authority from the Board.
32. 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

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

eligibility to receive payments. All forms of remuneration are captured by this Prudential Standard.

33. 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 life company's long-term financial soundness; and
 - (b) the risk management framework of the life company.
34. 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.
35. The Remuneration Policy must provide for the Board or, for an EFLIC, the Compliance Committee, 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 life company; or
 - (b) respond to significant unexpected or unintended consequences that were not foreseen by the Board Remuneration Committee or, for an EFLIC, the Compliance Committee.
36. 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 LPS 520, excluding Auditors, external Appointed Actuaries, non-executive directors and in the case of an EFLIC, members of the Compliance Committee;
 - (b) persons whose primary role is risk management, compliance, internal audit, financial control or actuarial 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 life company.

A person will be included within one of the above categories if that person is: employed directly by the life company; retained directly by the life company under contract; employed by, or a contractor of, a body corporate (including a

service company) that is a related body corporate of the life company; or, subject to paragraph 37, an entity that is not a related body corporate of the life company.

37. The Remuneration Policy must cover a service contract between a life company and an entity that is not a related body corporate of the life company, if:
- (a) the primary role of the entity is to provide risk management, compliance, internal audit, financial control or actuarial control services to the life company; 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 life company and, under the services contract with the life company, 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 life company'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 an EFLIC, the Compliance Committee.
38. APRA may determine in writing that an individual or class of individuals must be covered by the life company's Remuneration Policy. APRA will notify such a determination to the life company.
39. The Remuneration Policy must prohibit persons covered by paragraph 36(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.
40. 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.
41. If a life company utilises a group Remuneration Policy, in terms of paragraph 28 of this Prudential Standard, its Board (or, in the case of an EFLIC, the Compliance Committee) must ensure that the group Remuneration Policy, modified as necessary for the life company, meets the requirements set out in this Prudential Standard for the life company. (For the avoidance of doubt, paragraph 28 of this Prudential Standard applies to EFLICs for the purpose of group Remuneration Policies).

42. The Remuneration Policy must form part of a life company's risk management framework required under *Prudential Standard LPS 220 Risk Management*.
43. The Remuneration Policy must be provided to APRA on request.

Board Remuneration Committee

44. A life company (other than an EFLIC) must, unless otherwise approved in writing by APRA, have a Board Remuneration Committee that complies with the requirements of this Prudential Standard.
45. The Board Remuneration Committee must have at least three members. All members of the Committee must be non-executive directors of the life company. A majority of the members of the Committee must be independent. The chairperson of the Committee must be an independent director of the life company.
46. 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.
47. 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's opinion affect the financial soundness of the life company, 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 47(b)).
48. The Board Remuneration Committee, or in the case of an EFLIC, the Compliance Committee, 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.

49. Where a life company is part of a corporate group, the Board of the life company may use a group Board Remuneration Committee in order to meet the requirements of paragraph 44 of this Prudential Standard, provided that the other requirements set out in this Prudential Standard are met and the Board of the life company has unfettered access to the group Board Remuneration Committee.
50. For EFLICs, the Compliance Committee 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 Compliance Committee affect the financial soundness of the life company, 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 50(b)).
51. Members of the Board Remuneration Committee must be available to meet with APRA on request.

Board Audit Committee

52. A life company (including an EFLIC) must have a Board Audit Committee, which assists the Board by providing an objective non-executive review of the effectiveness of the life company's financial reporting and risk management framework unless, with respect to risk management, there is another Board Committee which carries out this function.
53. The Board Audit Committee must have sufficient powers to enable it to obtain all information necessary for the performance of its functions.
54. The Board Audit Committee must have at least three members. All members of the Committee must be non-executive directors of the life company.⁸ A majority of the members of the Committee must be independent.
55. The chairperson of the Board Audit Committee must be an independent director of the life company.
56. The chairperson of the Board can sit on the Board Audit Committee, but cannot chair the Committee.

⁸ The definition of 'executive officer' is contained in the Schedule to the *Life Insurance Act 1995*.

57. 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 life company's auditor.
58. The Board Audit Committee must review the 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*,⁹ as well as the additional auditor independence requirements set out in this Prudential Standard. For an EFLIC, it will be the responsibility of the Compliance Committee to undertake this assessment.
59. 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 life company. It must regularly review the findings of audits, and ensure that issues are being managed and rectified in an appropriate and timely manner.
60. The Board Audit Committee must ensure the adequacy and independence of both the internal and external audit functions.
61. 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, the life company's Auditor, and the Appointed Actuary and vice versa.
62. The Board Audit Committee must establish and maintain policies and procedures for employees of the life company to submit, confidentially, 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.
63. Members of the Board Audit Committee must be available to meet with APRA on request.
64. The Board Audit Committee must invite the life company's Auditor and Appointed Actuary to meetings of the Committee.
65. The internal auditor must have a reporting line and unfettered access to the Board Audit Committee. For EFLICs, the auditor of the local operation must have direct access to the Head Office audit function.

⁹ *APES 110 Code of Ethics for Professional Accountants* was issued by the Accounting Professional and Ethical Standards Board with effect from 1 July 2006.

Internal audit

66. A life company (including an EFLIC in relation to its Australian business) must have an independent and adequately resourced internal audit function. If a life company 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 should be exempt. APRA may approve alternative arrangements for a life company where APRA is satisfied that they will achieve the same objectives.
67. The objectives of the internal audit function must include evaluation of the adequacy and effectiveness of the financial and risk management framework of the life company (including an EFLIC). To fulfil its functions, the internal auditor must, at all times, have unfettered access to all the life company's business lines and support functions.

Auditor independence

68. 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.¹⁰
69. The Board of a life company (and the Compliance Committee in the case of an EFLIC) must, to the extent practical, undertake steps to satisfy itself that the auditor, who undertakes work for the life company (or EFLIC) in relation to the Act, the Prudential Standards, or the Reporting Standards, is independent of the life company (or EFLIC),¹¹ and that there is no conflict of interest situation that could compromise, or be seen to compromise, the independence of the auditor.
70. As part of the process of ascertaining the independence of the auditor, a life company (including an EFLIC) 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.
71. For the purposes of this Prudential Standard, a conflict of interest situation exists in relation to a life company (or EFLIC) at a particular time, if because of circumstances that exist at that time:

¹⁰ Reporting Standards are those standards made under the *Financial Sector (Collection of Data) Act 2001*.

¹¹ 'Independent of the life company (or EFLIC)' means that the auditor has been assessed as independent in terms of paragraph 58 of this Prudential Standard.

- (a) the auditor is not capable of exercising objective and impartial judgement in relation to the conduct of the work that is undertaken for the life company (or EFLIC) in relation to the Act, the Prudential Standards or the Reporting Standards; or
 - (b) 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 life company (or EFLIC) for the purposes of the Act, the Prudential Standards, or the Reporting Standards.¹²
72. 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 a life company (including an EFLIC) 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 life company until at least two years have passed since they served in that professional capacity.
73. A person, who was an employee of an audit company, other than a director of that company, and who acted as the lead auditor¹³ or review auditor¹⁴ in the audit of a life company (including an EFLIC) 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 life company until at least two years have passed since they acted as the lead auditor or review auditor.
74. A person cannot be appointed as a director or senior manager of a life company (or a senior manager in the case of an EFLIC) 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 life company 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 life company 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 life company at any time during the previous two years.

¹² 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 life company (including an EFLIC), will also result in a breach of the provisions of this Prudential Standard.

¹³ '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.

¹⁴ '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.

75. An individual who plays a significant role¹⁵ in the audit of a life company (including an EFLIC) 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 life company.
76. For the purposes of maintaining their independence and objectivity, the Auditor and Appointed Actuary of a life company (including an EFLIC), cannot both be employed by the same body corporate or related bodies corporate, or by the same firm or related firms.¹⁶

Board performance assessment

77. The Board of a life company 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

78. The Board of a life company 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 life company.

Persons not to be constrained from providing information to APRA¹⁷

79. No prospective, current, or former officer,¹⁸ employee or contractor (including professional service provider) of a life company (including an EFLIC), 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 life company, or

¹⁵ 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.

¹⁶ For the purposes of this Prudential Standard, related firms means either two or more firms, or a firm and a body corporate, that have common ownership or management, or where one has a substantial shareholding in the other.

¹⁷ Also refer to the provisions for the protection of whistleblowers under Part VII Division 5 of the Act and the whistleblowing provisions in LPS 520.

¹⁸ 'Officer' is defined in section 9 of the Corporations Act.

from providing documents under their control to APRA, that may be relevant in the context of the management or prudential supervision of the life company. Such persons are not to be constrained or impeded from providing information to auditors, the Appointed Actuary and others, who have statutory responsibilities in relation to the life company.

80. Life companies (including EFLICs) 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

81. This Prudential Standard commences on 1 April 2010.
82. Upon commencement of this Prudential Standard, the existing governance requirements contained in *Prudential Standard LPS 510 Governance* will cease to have effect.
83. A life company may be unable to comply immediately with some requirements in paragraphs 30 to 51 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 life company 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 life company on commencement of this Prudential Standard. However, those requirements will apply to the life company 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

84. APRA may by notice in writing to a life company adjust or exclude a specific prudential requirement in this Prudential Standard in relation to that life company.¹⁹

¹⁹ Refer to subsection 230A(4) of the Act.

Attachment A²⁰

A director is not independent if the director:

1. is a substantial shareholder²¹ of the life company or an officer of, or otherwise associated directly with, a substantial shareholder of the life company;
2. is employed, or has previously been employed in an executive capacity by the life company 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 life company or another group member, or an employee materially associated with the service provided;
4. is a material supplier or customer of the life company 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 life company or another group member other than as a director.

²⁰ 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* (2nd Edition).

²¹ 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.

Attachment B

Compliance Committee for eligible foreign life insurance companies

Purpose of the Compliance Committee

1. The purpose of the Compliance Committee (**the Committee**) is to:
 - (a) ensure the EFLIC complies with the requirements in, or imposed under, the Act; and
 - (b) assist the Board in meeting its responsibilities under the Act.
2. As required by subsections 16ZF(1) and (4) of the Act, the Board must delegate sufficient powers of management to the members of the Committee to enable Committee members to ensure that the EFLIC complies with the requirements in, or imposed under, the Act. The Board must do so irrespective of anything to the contrary in the EFLIC's constitution.

Continuing responsibility of the Board

3. Establishment of the Committee does not free the Board from ultimate responsibility for ensuring the Australian branch of the EFLIC complies with the requirements in, or imposed under, the Act.
4. In recognition of this, the Board must:
 - (a) have the power to appoint and remove, at its discretion, members of the Committee, as long as certain composition and residency requirements pertaining to the Committee continue to be met (refer to paragraphs 5 to 8);
 - (b) ensure that the delegation of relevant managerial powers (of the kind referred to in paragraph 16ZF(1)(a) and (b) of the Act) is not irrevocable, and that the Board retains the powers delegated; and
 - (c) establish adequate procedures for monitoring and supervising the operation of the Committee, as well as assessing its performance.

Composition and residency status of Committee members

5. The Committee must comprise of at least five members appointed by the Board. Those members must include:
 - (a) at least one director of the Board of the EFLIC;
 - (b) the Principal Executive Officer (**PEO**) appointed by the EFLIC for its Australian branch under either subsections 20(2) or 246(4) of the Act; and
 - (c) at least two independent members.

6. A member cannot satisfy more than one of the composition requirements contained in subparagraphs 5(a), 5(b) and 5(c) (i.e. the director, PEO and independent members must all be separate individuals).
7. At least two of the Committee members must be ordinarily resident in Australia, one being the PEO and the other an independent member.
8. It should be noted that the definition of director contained in the Act, in relation to an EFLIC, is taken to refer to both members of the Committee and the directors of the EFLIC (except for certain provisions, notably sections 230B and 245 of the Act, where only Committee members are being referred to).

Application for a modified Committee composition

9. APRA may, on written application from an EFLIC, determine a modified Committee for the EFLIC where it can be demonstrated that it is appropriate to do so.
10. In making this determination, APRA will take into account the following factors:
 - (a) the quantum of liabilities written by the EFLIC;
 - (b) the cost effectiveness or otherwise of establishing a Committee;
 - (c) any restrictions on the lines of business written by the EFLIC;
 - (d) whether these restrictions limit the number of policyholders of the EFLIC (for example, by targeting specific policyholder characteristics, such as age, nationality or geographical location); and
 - (e) whether the EFLIC has written any material amount of long tail business.
11. The composition of any modified Committee would be determined in writing on a case by case basis by APRA, but the possible modifications could take one or more of the following forms:
 - (a) a Committee with fewer than five members;
 - (b) replacing the director of the Board of the EFLIC as required by subparagraph 5(a) with the PEO; or
 - (c) a Committee with fewer than two independent members.

Appointment and removal of Committee members

12. The power to appoint and remove members of the Committee resides with the Board.
13. The Board must have appointed all members and formally constituted the Committee within seven days of receiving notification of registration.
14. Each member of the Committee must be fit and proper for the role.

(Note: The requirements for fitness and propriety are set out in *Prudential Standard LPS 520 Fit and Proper*).

15. The Board must ensure that the Committee as a whole possesses the necessary skills and expertise to ensure that the EFLIC complies with the requirements in, or imposed under, the Act, and to discharge the duties and responsibilities of the Committee provided for in this Prudential Standard.
16. The Committee must have a policy for dealing with conflicts of interest.
17. Notwithstanding the Board's power to appoint and remove members, APRA may, under section 230B of the Act, direct an EFLIC to remove a member of the Committee.
18. While membership of the Committee is the responsibility of the Board, the powers to appoint and remove members of the Committee must not be used in a manner that impedes, discourages or otherwise hinders the Committee from discharging its duties and responsibilities. Examples that would be cause for concern by APRA would be an excessive turnover of members, or the removal of members at inappropriate times (for example at critical reporting periods). If requested to do so, by APRA, an EFLIC must, within a time stipulated by APRA, in writing (which must not be unreasonable), provide a written report to APRA responding to any queries APRA has regarding the removal of members.

Processes of the Committee

19. At least three members of the Committee are required to be present at a meeting of the Committee to form a quorum. The PEO, and at least one independent member who is ordinarily resident in Australia, must be amongst the three members present.
20. The chairperson of the Committee must be a non-executive member.
21. Resolutions can only be passed by a majority with the chairperson having a casting vote.
22. The Committee must meet as often as required to discharge its duties and responsibilities, although APRA would expect the Committee to meet on at least a quarterly basis. Members, and individuals who may be needed to address the Committee, must be given reasonable notice of pending meetings.
23. The Committee must ensure that the Appointed Actuary is given reasonable notice of any meeting of the Committee at which matters are to be considered that relate to the functions and duties of the actuary, including matters:
 - (a) that relate to, or may affect:
 - (i) the solvency of the company; or
 - (ii) the adequacy of the capital of the company; or
 - (b) that relate to advice given by the Appointed Actuary to the directors; or

- (c) that concern a matter in relation to which the Appointed Actuary will be required to give advice.
24. Written minutes of Committee meetings must be taken and copies kept and made available to APRA on request. Any papers or submissions put to the Committee must likewise be kept and made available to APRA on request.

Duties and responsibilities of the Committee

25. The Committee must, with the powers delegated to it by the Board, ensure that the EFLIC complies with:
- (a) the Act;
 - (b) the *Life Insurance Regulations 1995*;
 - (c) the prudential standards determined under section 230A;
 - (d) the Prudential Rules made under section 252;
 - (e) any conditions placed upon the EFLIC under section 22 at the time, or after, of its registration;
 - (f) directions given under the Act; and
 - (g) the *Financial Sector (Collection of Data) Act 2001*.
26. The Committee members must report to APRA, within 14 business days, of becoming aware:
- (a) that the EFLIC has failed to comply with a requirement referred to in paragraph 25; or
 - (b) the Committee believes there is a material risk of the EFLIC being unable to meet its obligations at some future time.
27. The report must:
- (a) be in the form of a written report explaining the causes of the failure or the material risk to the solvency of the EFLIC identified by the Committee; and
 - (b) outline a plan and timeframe for rectifying the failure or mitigating the risk of insolvency.
28. APRA would expect the Committee to provide a copy of the report to the Board.