



Prudential Standard HPS 112

Capital Adequacy: Measurement of Capital

Objectives and key requirements of this Prudential Standard

This Prudential Standard sets out the characteristics that an instrument must have to qualify for inclusion in the capital base of a private health insurer and the various regulatory adjustments to be made to determine the capital base for each health benefits fund, the general fund and the private health insurer as a whole.

The ultimate responsibility for ensuring that the capital base of a private health insurer and the capital bases of all of its funds meet the requirements of this Prudential Standard rests with its Board of directors.

The key requirements of this Prudential Standard are that a private health insurer must:

- comply with minimum requirements regarding the size and composition of the capital base for the private health insurer as a whole and for each of its funds;
- include in the appropriate category of capital (i.e. Common Equity Tier 1 Capital, Additional Tier 1 Capital or Tier 2 Capital) only those capital instruments that meet the detailed criteria for that category;
- ensure all capital instruments are capable of bearing loss; and
- make certain regulatory adjustments to capital, mainly from Common Equity Tier 1 Capital, to determine the capital base.

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Authority

1. This Prudential Standard is made under subsection 92(1) of the *Private Health Insurance (Prudential Supervision) Act 2015* (the Act).

Application and commencement

2. This Prudential Standard applies to all **private health insurers** except where expressly noted otherwise.
3. A private health insurer must apply this Prudential Standard separately to each of its **health benefits funds** and its **general fund**, in addition to the private health insurer as a whole, unless otherwise noted. The term ‘private health insurer’ refers to the private health insurer as a whole. The term ‘fund’ refers to each health benefits fund and the general fund, unless otherwise noted.
4. This Prudential Standard applies to private health insurers from 1 July 2023.

Interpretation

5. Terms that are defined in *Prudential Standard HPS 001 Definitions* appear in bold the first time they are used in this Prudential Standard.
6. In this Prudential Standard, unless a contrary intention appears, a reference to an Act, Regulations, Prudential Standard, **Australian Accounting Standard** is a reference to the instrument as in force from time to time.
7. Unless otherwise indicated:
 - (a) The term ‘accounts receivables’ will be used to refer to premiums, reinsurance recoveries, non-reinsurance recoveries and other accounts receivable that have been recognised within the insurance and reinsurance contract liabilities and assets reported on the balance sheet under *AASB 17 Insurance Contracts*; and
 - (b) the term ‘accounts payables’ will be used to refer to claims, reinsurance premiums, reinsurance recoveries, non-reinsurance recoveries and other accounts payable that have been recognised within the insurance and reinsurance contract liabilities and assets reported on the balance sheet under *AASB 17 Insurance Contracts*.
8. For the purposes of this Prudential Standard:
 - (a) a ‘component of capital’ is any form of capital defined in this Prudential Standard as eligible for inclusion in the **capital base**;
 - (b) a ‘category of capital’ is a group of components of capital;
 - (c) the ‘net assets’ of a health benefits fund, general fund, or private health insurer is a reference to the net assets of the fund, or private health insurer determined under the private health insurer’s prudential reporting to

APRA under the *Financial Sector (Collection of Data) Act 2001* (FSCODA);

Adjustments and exclusions

9. APRA may, by notice in writing to a private health insurer, adjust or exclude a specific requirement in this Prudential Standard in relation to that private health insurer.

Previous exercise of discretion

10. A private health insurer must contact APRA if it seeks to place reliance, for the purposes of complying with this Prudential Standard, on a previous exemption or other exercise of discretion made by APRA under a previous Prudential Standard.

Definitions

11. For the purposes of this Prudential Standard:
 - (a) capital instruments – includes all capital instruments eligible to be included in **Common Equity Tier 1 Capital, Additional Tier 1 Capital and Tier 2 Capital**;
 - (b) distributable items – means items that are permitted to be distributed in accordance with relevant statutory and regulatory requirements applicable to distributions by the issuer;
 - (c) mutual equity interests – capital instruments issued by mutually owned private health insurers that meet the criteria in Attachment F to this Prudential Standard;
 - (d) mutually-owned private health insurer – means a private health insurer that is a ‘mutual entity’ as defined in the **Corporations Act**;
 - (e) non-viability event – has the meaning in paragraph 2 of Attachment E to this Prudential Standard;
 - (f) paid-up instrument means a capital instrument where:
 - (i) the payment of the capital has been received with finality by the issuer;
 - (ii) the capital is reliably valued;
 - (iii) the capital is fully under the issuer’s control; and
 - (iv) the instrument does not, directly or indirectly, expose the issuer to the credit risk of an investor;
 - (g) related entity – means an entity over which a private health insurer or parent entity of the private health insurer exercises control or significant

influence and can include a parent company, a sister company, a subsidiary or any other affiliate.

Capital base of a private health insurer

12. The capital base must be assessed for the private health insurer as a whole and for each of its funds.
13. The capital base of a private health insurer consists of the following categories:
 - (a) **Tier 1 Capital**, which comprises:
 - (i) Common Equity Tier 1 Capital;
 - (ii) Additional Tier 1 Capital;
 - (iii) Paid-up mutual equity interests issued by a mutually-owned private health insurer that meet the criteria in paragraph 1 of Attachment F to this Prudential Standard and are above the limit specified in paragraph 4 of Attachment F; and
 - (b) Tier 2 Capital.that satisfy the criteria in this Prudential Standard.
14. A private health insurer must ensure that at all times:¹
 - (a) the Common Equity Tier 1 Capital for the private health insurer exceeds 60 per cent of the **prescribed capital amount** of the private health insurer;
 - (b) the Tier 1 Capital for the private health insurer exceeds 80 per cent of the prescribed capital amount of the private health insurer;
 - (c) the capital base for the private health insurer exceeds the **Prudential Capital Requirement (PCR)** of the private health insurer;
 - (d) 120 percent of the net assets for the private health insurer exceeds 60 percent of the prescribed capital amount of the private health insurer;
 - (e) the sum of 120 percent of the net assets and the Additional Tier 1 Capital for the private health insurer exceeds 80 percent of the prescribed capital amount of the private health insurer; and
 - (f) the sum of 120 percent of the net assets, the Additional Tier 1 Capital and the Tier 2 Capital for the private health insurer exceeds the PCR of the private health insurer.

¹ The net assets of the private health insurer referred to in subparagraphs 14(d), 14(e) and 14(f) is as defined in subparagraph 8(c) but excludes equity components that are classified as Additional Tier 1 Capital.

15. APRA may require, by notice in writing, a private health insurer to hold a higher percentage of its prescribed capital amount as Common Equity Tier 1 Capital and/or Tier 1 Capital.
16. A private health insurer must ensure that any item of capital that the private health insurer includes in a particular category of its capital base satisfies, in both form and substance, all requirements in this Prudential Standard for the particular category of capital in which it is included.
17. A private health insurer must not include an item of capital in a particular category of its capital base if that item, when considered in conjunction with other related transactions that affect its overall economic substance, could be reasonably considered not to satisfy the requirements of this Prudential Standard for that category of the capital base.
18. A private health insurer must not include a capital instrument in a category of the capital base based on a future event,² until such time as:
 - (a) the future event occurs, and
 - (b) the proceeds have been irrevocably received by the private health insurer.
19. APRA may require a private health insurer to:
 - (a) exclude from its capital base any item included as a component of capital that in APRA's opinion is not a genuine contribution to the financial strength of the private health insurer; or
 - (b) reallocate to a lower category of the capital base any component of capital that in APRA's opinion does not satisfy the requirements of this Prudential Standard for the category of the capital base to which it was originally allocated.
20. A capital instrument is not eligible for inclusion in a category of the capital base if the nature or complexity of its terms, its location of issue, or its structure raises concerns over whether the instrument fully, and unequivocally, satisfies the requirements for the category of the capital base in this Prudential Standard.
21. A private health insurer must not include a capital instrument that involves the use of a **special purpose vehicle** (SPV), or a stapled security structure consisting of the issue of a preference share and a stapled instrument of another form, in its regulatory capital.
22. A private health insurer must not include a capital instrument in its capital base if the capital instrument has features that hinder recapitalisation of the private health insurer, or any other members of the group to which the private health insurer belongs. This includes features that require the private health insurer or any other

² This includes, but is not limited to, the future sale or issuance of a capital instrument and the future conversion of an instrument or debt into ordinary shares or mutual equity interests.

members of the group, to compensate investors if a new instrument is issued at a lower price during a specified timeframe.

23. A capital instrument is not eligible for inclusion in the capital base if it contains any terms that could inhibit the private health insurer's ability to be managed in a sound and prudent manner, particularly in times of financial difficulty, or restrict APRA's ability in its role as a prudential regulator to resolve any problems encountered by the private health insurer.
24. A capital instrument is not eligible for inclusion in the capital base if it includes any 'repackaging' arrangements that have the effect of compromising the quality of capital raised.³
25. A private health insurer must, and must ensure that other members of the group to which the private health insurer belongs, not create an expectation at issuance that a capital instrument will be bought back, redeemed or cancelled prior to maturity, and the statutory or contractual terms of the instrument must not include any feature that may give rise to such an expectation. A private health insurer must, and must ensure that any other members of the group to which the private health insurer belongs, not assume, or create market expectations, that supervisory approval will be forthcoming for the private health insurer or any other members of the group, to buy back, redeem or cancel an instrument prior to maturity.
26. A private health insurer may not, without obtaining APRA's prior written approval, enter into an arrangement where it may purchase, or provide financial assistance with a dominant purpose of facilitating the purchase by another party of, its own capital instruments. Any such arrangement, if approved by APRA, shall be subject to a limit agreed with APRA.
27. A private health insurer must provide APRA, as soon as practicable, with copies of documentation associated with the issue of Additional Tier 1 Capital and Tier 2 Capital instruments.
28. Where the terms of a capital instrument depart from established precedent, a private health insurer must consult with APRA on the eligibility of the capital instrument for inclusion as a category of the private health insurer's capital base in advance of the issuance of the instrument, and provide APRA with all information it requires to assess the eligibility of the instrument.
29. As part of the documentation provided for the purposes of paragraphs 27 and 28 of this Prudential Standard, a private health insurer must include a statement of compliance of the capital instrument signed by **senior management** of the private health insurer. The statement must:

³ As an example, repackaging may occur where an instrument is not marketed in line with its prudential treatment, or if the transaction documentation suggests to investors that the instrument has attributes of a lower quality component of capital than claimed for prudential treatment.

- (a) address how the issuer is satisfied that each required capital eligibility criterion set out in this Prudential Standard is met and will continue to be met in the future; and
 - (b) clearly set out references to supporting documents and opinions that demonstrate that the criteria are met.
- 30. A private health insurer must obtain APRA's approval before the terms of an instrument are altered in a way that may affect its eligibility as a component of the capital base.

Common Equity Tier 1 Capital

- 31. Common Equity Tier 1 Capital comprises the highest quality components of capital that fully satisfy all of the following characteristics:
 - (a) provide a permanent and unrestricted commitment of funds;
 - (b) are freely available to absorb losses;
 - (c) do not impose any unavoidable servicing charge against earnings; and
 - (d) rank behind the claims of policy owners and other creditors in the event of winding-up of the issuer.
- 32. Common Equity Tier 1 Capital consists of the sum of:
 - (a) paid-up ordinary shares issued by a private health insurer (whether listed on an exchange or unlisted) that meet the criteria in Attachment A to this Prudential Standard;
 - (b) paid-up mutual equity interests issued by a mutually-owned private health insurer that meet the criteria in paragraph 1 of Attachment F to this Prudential Standard up to the limit specified in paragraph 4 of Attachment F;
 - (c) retained earnings;
 - (d) undistributed current year earnings (refer to paragraph 33 to 36 to this Prudential Standard);
 - (e) accumulated other comprehensive income and other disclosed reserves (refer to paragraph 37 and 38 to this Prudential Standard);
 - (f) technical provisions in surplus/(deficit) of those required by *Prudential Standard HPS 340 Insurance Liability Valuation* (HPS 340);⁴ and

⁴ Defined as the insurance contract and reinsurance contract liabilities and assets (including accruals for the cost of reinsurance not recognised in the accounts required to cover premiums liabilities) as defined in Australian Accounting Standards in excess of the sum of the outstanding claims liabilities, premiums liabilities, risk equalisation transfers and other insurance liabilities as defined in HPS 340.

- (g) regulatory adjustments applied in the calculation of Common Equity Tier 1 Capital required under Attachment B to this Prudential Standard.
33. Current year earnings must take into account:
- (a) negative goodwill;
 - (b) expected tax expenses; and
 - (c) dividends when declared in accordance with Australian Accounting Standards.
34. Declared dividends for the purpose of paragraph 33(c) of this Prudential Standard may be reduced by the expected proceeds, as agreed in writing by APRA, of a Dividend Reinvestment Plan (DRP) to the extent that dividends are used to purchase new ordinary shares issued by the private health insurer. A private health insurer must review every six months the expected subscription for new ordinary shares under its DRP having regard to experience over previous years and reasonable expectations of the level of subscription that might apply in future. If a private health insurer identifies any material change in the expected level of future subscription for new ordinary shares under its DRP, it must notify APRA and obtain APRA's approval to a new amount by which declared dividends may be reduced for regulatory capital purposes.
35. Current year earnings include the full value of fee income not sourced from the insurer's health insurance policies provided that:
- (a) the fee income has either been received in **cash** or has been debited by the private health insurer to an account to be paid by the provider of the fees or otherwise forms part of the upfront fees owed to the private health insurer;
 - (b) outstanding amounts of fee income debited by the private health insurer to the account are claimable in full in the event of default on the amounts receivable, or capable of being sold to a third party as part of outstanding debts;
 - (c) the provider of the fee income has no recourse for repayment in part or full of any prepaid income;
 - (d) any fees debited by the private health insurer to the account cannot be cancelled by the provider of the fee income where the fees were to be paid upfront; and
 - (e) there is no requirement for the provision of continuing additional services or products associated with the fee income concerned.
36. Fee income not sourced from the insurer's health insurance policies may include net positive amounts arising from the netting of deferred or future income and capitalised expenses associated with a product class (not comprising the insurer's health insurance policies) provided the conditions in paragraph 35 to this Prudential Standard are satisfied. Any deferred income or future income that do

not satisfy the conditions in paragraph 35, if not already excluded from current year or retained earnings, must be deducted from Common Equity Tier 1 Capital.

37. Accumulated other comprehensive income and other disclosed reserves include, but are not limited to:
- (a) unrealised gains or losses recognised on the balance sheet;
 - (b) reserves from equity-settled share-based payments (share or share options) granted to employees as part of their remuneration package provided that:
 - (i) the share or share options granted relate only to the ordinary shares of the private health insurer;
 - (ii) the ordinary shares comprise only new ordinary shares to be issued by the private health insurer, or new ordinary shares already issued by the private health insurer to employees, or new ordinary shares already issued by the private health insurer to employees for this specific purpose; and
 - (iii) there are no circumstances under which such remuneration can be converted into another form (e.g. cash).
 - (c) foreign currency translation reserve;
 - (d) general reserves;
 - (e) cumulative unrealised gains or losses on hedges⁵ offsetting gains or losses included in Common Equity Tier 1 Capital (such as movements in the currency value of foreign-currency-denominated hedging instruments that offset movements in foreign-currency-denominated items recognised in the foreign currency translation reserve). This includes **fair value** gains or losses on derivatives representing effective economic hedges of assets; and
 - (f) any other gains and losses in accumulated other comprehensive income and other disclosed reserves that may be specified by APRA in writing.

For the purpose of paragraph 37(b) any other reserves associated with share-based payments must be excluded from the capital base.

38. Revaluation of property holdings on the balance sheet may be included as part of other disclosed reserves only if:
- (a) the property is owned by the private health insurer;
 - (b) the property comprises only land and buildings;

⁵ This includes cumulative unrealised gains or losses on effective cash flow hedges as defined in Australian Accounting Standards.

- (c) the property is readily available to be sold. A property need not be scheduled for sale, nor need a sale be intended. However, such a property must be capable of being readily sold within six months were a decision made to sell the property;
- (d) the reserves are shown as a component of equity in the audited published financial accounts of the private health insurer;
- (e) the revaluations are reliable, in accordance with Australian Accounting Standards, and subject to audit or review consistent with **Australian Auditing and Assurance Standards**. A property must be measured at fair value in accordance with Australian Accounting Standards; and
- (f) the amount of reserves incorporates the full effect of any fair value gains or losses and any gains or losses on hedges offsetting revaluations of the property included in the reserves.

Additional Tier 1 Capital

39. Additional Tier 1 Capital comprises high quality components of capital that satisfy the following essential characteristics:
- (a) provide a permanent and unrestricted commitment of funds;
 - (b) are freely available to absorb losses;
 - (c) rank behind the claims of **policy holders** and other more senior creditors in the event of winding up of the issuer; and
 - (d) provide for fully discretionary capital distributions.
40. Additional Tier 1 Capital consists of:
- (a) instruments issued by a private health insurer that are not included in Common Equity Tier 1 Capital and which meet:
 - (i) the criteria for inclusion in Additional Tier 1 Capital set out in Attachment C to this Prudential Standard; and
 - (ii) the requirements for loss absorbency at the point of non-viability set out in Attachment E to this Prudential Standard; and
 - (b) regulatory adjustments applied in the calculation of Additional Tier 1 Capital as required under Attachment B to this Prudential Standard.

Tier 2 Capital

41. Tier 2 Capital includes other components of capital that, to varying degrees, fall short of the quality of Tier 1 Capital but nonetheless contribute to the overall strength of a private health insurer and its capacity to absorb losses.
42. Tier 2 Capital consists of:

- (a) instruments issued by the private health insurer that meet:
 - (i) the criteria for inclusion in Tier 2 Capital set out in Attachment D to this Prudential Standard; and
 - (ii) the requirements for loss absorption at the point of non-viability set out in Attachment E to this Prudential Standard; and
- (b) regulatory adjustments applied in the calculation of Tier 2 Capital as required under Attachment B to this Prudential Standard.

Additional Tier 1 or Tier 2 Capital issued overseas by the private health insurer

43. Additional Tier 1 Capital instruments and Tier 2 Capital instruments may be issued by a private health insurer, either in its country of incorporation or through a branch in another country, provided the instrument:
- (a) constitutes an obligation of the private health insurer at all times;
 - (b) is freely available to absorb losses across all of the operations of the private health insurer; and
 - (c) meets all of the requirements of this Prudential Standard for inclusion in Additional Tier 1 Capital or Tier 2 Capital.

Intra-group capital transactions

44. The matters APRA may consider in assessing whether an item included by a private health insurer as a component of capital resulting from intra-group transactions is not a genuine contribution to financial strength include, but are not limited to, whether the item:
- (a) is clearly supplied from debt raised by other group members;
 - (b) results from intra-group transactions with no economic substance;
 - (c) is contributed by a member of the group using funding sources, directly or indirectly, from the private health insurer itself; and
 - (d) is contributed by a group member and the funding of which contains cross-default clauses that would be triggered as a result of the private health insurer failing to meet any servicing obligations.
45. In assessing the overall strength of the capital adequacy of a private health insurer, APRA will have regard to the level of capital adequacy of individual group members of a group to which the private health insurer belongs, including any limitations in the amount of capital that may be readily extracted from individual group members to provide support, if required, to recapitalise the private health insurer.

46. In assessing the overall strength of a private health insurer, APRA may request that the parent entity provide APRA with details of relevant intra-group exposures, including capital transactions and intra-group guarantees. The information on intra-group exposures would typically include details of all intra-group exposures provided by the private health insurer to other members of the group. APRA may also request details of material exposures between other members of the group to which it belongs.

Holding of capital instruments in group members by other group members

47. Capital instruments of a private health insurer that are held as direct investments by a vehicle⁶ subject to consolidation within the financial statements of the group to which it belongs in accordance with Australian Accounting Standards, may be included in Common Equity Tier 1 Capital, Additional Tier 1 Capital and Tier 2 Capital, or the capital base of a fund, only if:
- (a) the private health insurer (or relevant vehicle other than a parent company of the private health insurer, in respect of its own holdings of these instruments) did not fund the acquisition of the capital instruments (i.e. acquisition of capital instruments is funded by third parties such as private health insurance policy holders or other third-party investors);
 - (b) the risk and rewards associated with the investments are borne primarily by third-parties;
 - (c) the private health insurer can demonstrate to APRA, if required, that decisions to acquire or sell such capital instruments are made independently of the issuer of the capital instruments and in the interests of the third parties who primarily bear the risks and rewards of the investments in the instruments; and
 - (d) the instruments are not held for the purposes of employee share-based remuneration scheme.
48. Direct investments in shares of a private health insurer by an SPV (e.g. a trust) established under a share-based employee remuneration scheme may be included in the private health insurer's Common Equity Tier 1 Capital only if:
- (a) the shares issued to the SPV represent ordinary shares of the private health insurer;
 - (b) the amount included in Common Equity Tier 1 Capital is matched by an equivalent charge to profit or loss of the private health insurer for expensing the issue of ordinary shares to, or funding the acquisition of ordinary shares by the vehicle; and

⁶ These vehicles exclude any SPV, such as a trust, involved with employee share-based remuneration schemes.

- (c) the ordinary shares issued cannot be converted to payment in another form (e.g. cash).
49. If the requirements in paragraph 47 and 48 are not satisfied, the relevant capital instruments must be treated as holdings of own capital instruments and deducted from Common Equity Tier 1 Capital, Additional Tier 1 Capital and Tier 2 Capital as appropriate.

Capital base of a health benefits fund

50. The capital base of a health benefits fund is:
- (a) the net assets of the health benefits fund; plus/(less)
 - (b) technical provisions in surplus/(deficit) of those required by HPS 340;⁷ less
 - (c) all regulatory adjustments to the net assets of the health benefits fund required under Attachment B; plus
 - (d) Tier 2 Capital as defined in paragraph 51.
51. The Tier 2 Capital of a health benefits fund consists of:
- (a) instruments that are a liability of that health benefits fund and meet the criteria for inclusion in Tier 2 Capital as set out in Attachment D; less
 - (b) all holdings by the health benefits fund of the private health insurer's own Tier 2 Capital instruments.
52. A private health insurer must ensure that, at all times:
- (a) the capital base less the Tier 2 Capital in accordance with paragraph 51 of each health benefits fund exceeds 80 per cent of the prescribed capital amount of the health benefits fund;
 - (b) the capital base of each health benefits fund exceeds the PCR of the fund;
 - (c) 120 percent of the net assets of each health benefits fund exceeds 80 percent of the prescribed capital amount of the fund; and
 - (d) the sum of 120 percent of the net assets and the Tier 2 Capital in accordance with paragraph 51 of each health benefits fund exceeds the PCR of the fund.

⁷ Defined as the insurance contract and reinsurance contract liabilities and assets (including accruals for the cost of reinsurance not recognised in the accounts required to cover premiums liabilities) as defined in Australian Accounting Standards in excess of the sum of outstanding claims liabilities, premiums liabilities, risk equalisation transfers and other insurance liabilities as defined in HPS 340.

53. APRA may, by notice in writing to a private health insurer, set a higher percentage for the capital base, net of Tier 2 Capital, for one or more health benefits funds of the private health insurer.

Capital base of a general fund

54. The capital base of a general fund is:
- (a) the net assets of the general fund; plus/(less)
 - (b) technical provisions in surplus/(deficit) of those required by HPS 340⁸; less
 - (c) all regulatory adjustments to the net assets of the general fund required under Attachment B to this Prudential Standard.
55. A private health insurer must ensure that, at all times, the capital base of the general fund exceeds the PCR of the fund.
56. A private health insurer must ensure that, at all times, 120 percent of the net assets of the general fund exceeds the PCR of the fund.

Transition

57. Capital instruments issued before 1 July 2025 that complied with APRA's prudential capital requirements in force at the time of issue may be eligible for the transitional arrangements. APRA will determine in writing whether an instrument is eligible for transition on a case by case basis.
58. Subject to paragraph 2 of Attachment G, a private health insurer must notify APRA by 30 June 2023, and provide the data (using a template provided by APRA) described in paragraphs 3(a) and 3(b) of Attachment G by 30 September 2023, if they adopt the transitional arrangements set out in Attachment G. A private health insurer that adopts the transitional arrangements set out in Attachment G may only do so until 30 June 2025.

⁸ Defined as the insurance contract and reinsurance contract liabilities and assets (including accruals for the cost of reinsurance not recognised in the accounts required to cover premiums liabilities) as defined in Australian Accounting Standards in excess of the sum of outstanding claims liabilities, premiums liabilities, risk equalisation transfers and other insurance liabilities as defined in HPS 340.

Attachment A – Criteria for classification as paid-up ordinary shares

1. To be classified as paid-up ordinary shares in Common Equity Tier 1 Capital, an instrument must satisfy the following criteria:
 - (a) the instrument must be the only class of ordinary shares, except for the distinction between voting and non-voting ordinary shares. Non-voting ordinary shares must be identical to voting ordinary shares of the issuer in all respect except the absence of voting rights;
 - (b) the instrument represents the most subordinated claim in liquidation of the issuer;
 - (c) the instrument holder is entitled to a claim on the residual assets that is proportional to its share of issued capital, after all senior claims have been repaid in liquidation (i.e. there is an unlimited and variable claim, not a fixed or capped claim);
 - (d) the principal amount of the instrument is perpetual (i.e. it has no maturity date) and is never repaid outside of liquidation (other than discretionary repurchases subject to APRA approval);
 - (e) distributions on the instrument are paid out of distributable items (retained earnings included) of the issuer, and there are no features that require the issuer to make payments in kind. The level of distributions must not be tied or linked to the amount paid up at issuance, or to the credit standing of the issuer, and must not be subject to a contractual cap, except to the extent that restrictions applied to the payment of distributions are in accordance with *Prudential Standard HPS 110 Capital Adequacy* (HPS 110);
 - (f) there are no circumstances under which the distributions are obligatory. Non-payment of a distribution does not trigger any restrictions on the issuer or any other member of the group to which the issuer belongs. Any waived distributions are non-cumulative (i.e. they are not required to be made up by the issuer at a later date). Non-payment of distributions must not be an event of default of the issuer or of any other member of the group to which the issuer belongs;
 - (g) distributions are paid only after all legal and contractual obligations have been met and payments on more senior capital instruments have been made. There are no preferential distributions, including in respect of other elements classified as Common Equity Tier 1 Capital;
 - (h) the instruments take the first and proportionately greatest share of any losses as they occur.⁹ Within Common Equity Tier 1 Capital, each

⁹ In cases where capital instruments have a permanent write-off feature, this criterion is still deemed to be met by ordinary shares.

instrument absorbs losses proportionately, and *pari passu*, with all the other instruments included in Common Equity Tier 1 Capital;

- (i) only the paid-up amount of the instrument, irrevocably received by the issuer, is recognised as equity capital (i.e. it is not recognised as a liability) for determining balance sheet insolvency;
 - (j) the paid-up amount of the instrument is classified as equity under relevant accounting standards;
 - (k) the instrument is directly issued by the issuer, and, except where otherwise permitted in this Prudential Standard, the issuer, any other member of a group to which the issuer belongs, or any related entity¹⁰, cannot have purchased or directly or indirectly¹¹ funded the purchase of the instrument, or be funding the instrument;
 - (l) the paid-up amount of the instrument, or any future payments related to the instrument, is neither secured nor covered by a guarantee of the issuer or a related entity, or subject to any other arrangement that legally or economically enhances the seniority of the claim. The instrument may not be subject to netting or offset claims on behalf of the holder or the issuer of the instrument;
 - (m) the instrument is only issued with the approval of the owners of the issuer, either given directly by the owners or, if permitted by applicable law, given by the Board or by other persons duly authorised by the owners; and
 - (n) the instrument is clearly and separately disclosed on the issuer's financial statements and, in any consolidated financial statements. Disclosure must be in line with the frequency with which a private health insurer publishes its financial results.
2. Where issue documentation, marketing of an instrument, or any ongoing dealings with investors in the instrument, suggest the instrument has attributes not consistent with the eligibility requirements in this Attachment, the instrument will be ineligible to be included in the private health insurer's Common Equity Tier 1 Capital.
3. Where an instrument is subject to the laws of a foreign jurisdiction, the private health insurer must also ensure that the instrument satisfies all relevant qualifying criteria for Common Equity Tier 1 Capital under this Attachment and the laws of the foreign country do not override the provisions within the instrument designed to meet these criteria.
4. APRA may require the private health insurer to provide an independent expert opinion, addressed to APRA by a firm or practitioner of APRA's choice and at the expense of the private health insurer, confirming that the instrument meets all

¹⁰ This does not preclude a parent entity of the private health insurer from holding the instrument where the instrument is directly issued by the private health insurer to the parent entity.

¹¹ Indirect exposures represent exposures that will result in a loss to the private health insurer substantially equivalent to any loss in the direct holding.

or any criteria applied to Common Equity Tier 1 Capital instruments in this Prudential Standard.

5. For the purposes of Attachment F to this Prudential Standard, a reference in this Attachment (except in paragraphs 1(b), 1(c), 1(e), 1(g), and 1(h) of this Attachment) to ‘paid up ordinary shares’ is to be read as a reference to ‘paid up mutual equity interests’.

Attachment B – Regulatory adjustments

General rules for regulatory adjustments

1. In determining the size of regulatory adjustments (i.e. deductions) from a category of a private health insurer's capital base, items must be valued on the same basis as a private health insurer's accounts prepared in accordance with the FSCODA.
2. For the purposes of deductions to Additional Tier 1 Capital and Tier 2 Capital:
 - (a) where the amount of Additional Tier 1 Capital is insufficient to cover the amount of deductions required to be made from this category of capital, the shortfall must be deducted from Common Equity Tier 1 Capital; and
 - (b) where the amount of Tier 2 Capital is insufficient to cover the amount of deductions required to be made from this category of capital, the shortfall must be deducted from Additional Tier 1 Capital and, if Additional Tier 1 Capital is insufficient to cover the amount of the deductions required, the remaining amount must be deducted from Common Equity Tier 1 Capital.
3. Where a capital instrument is required to be deducted and it is not possible to determine whether it should be deducted from Common Equity Tier 1 Capital, Additional Tier 1 Capital or Tier 2 Capital, the deduction must be made from Common Equity Tier 1 Capital. A private health insurer must consult APRA if there is uncertainty about the category of capital against which a deduction must be made.
4. For the purposes of deducting from the relevant category of the capital base, a private health insurer may net any provisions against the relevant exposures or holdings, or the relevant non-defaulted exposures or holdings that represent identified losses, before making the necessary deductions from the relevant categories of capital.
5. A private health insurer must not recognise, for the purpose of measuring its capital adequacy, any transactions (or dealings) which have the aim of offsetting required deductions.

Holdings of own capital instruments

6. Unless otherwise indicated, a private health insurer must deduct from the corresponding category of capital holdings of the private health insurer's own capital instruments, whether held directly or indirectly¹², unless otherwise exempted in writing by APRA or unless eliminated under Australian Accounting Standards from the relevant category of capital. This deduction must include any capital instruments that the private health insurer could be contractually obliged

¹² Indirect exposures represent exposures that will result in a loss to the private health insurer substantially equivalent to any loss in the direct holding.

to purchase and also all of the unused portion of any limit agreed with APRA under paragraph 26 of this Prudential Standard;

Regulatory adjustments to Common Equity Tier 1 Capital

7. A private health insurer must adjust their Common Equity Tier 1 Capital to allow for the effects of 'accounts receivables' and 'accounts payables' on the AASB 17 insurance and reinsurance contract liability (net of insurance and reinsurance contract assets and net of tax effects). 'Accounts receivables' are added to CET1 capital and 'accounts payables' are deducted from CET1 capital.
8. Additionally, a private health insurer must make the following deductions to determine Common Equity Tier 1 Capital.

Cash flow hedge reserve

9. A private health insurer must eliminate the amount of the cash flow hedge reserve that relates to the hedging of items that are not recorded at fair value on the balance sheet (including projected cash flows).¹³

Deferred tax assets and deferred tax liabilities

10. Subject to paragraphs 11, 12 and 13 of this Attachment, a private health insurer must deduct deferred tax assets net of deferred tax liabilities.¹⁴
11. The netting of these items must be on a consistent basis. Where deferred tax liabilities exceed deferred tax assets, the excess of deferred tax liabilities must not be added to Common Equity Tier 1 Capital (i.e. the net deduction is zero). Deferred tax assets and liabilities include any tax effects that would result from the accounts receivables and accounts payables adjustment outlined in paragraph 7 of this Attachment and the technical provisions in surplus or deficit of HPS 340 liabilities outlined in paragraph 32(f) of this Prudential Standard.
12. The netting of deferred tax assets and deferred tax liabilities must only be applied where the private health insurer has a legally enforceable right to set-off current tax assets against current tax liabilities where they relate to income taxes levied by the same taxation authority and the taxation authority permits the private health insurer to make or receive a single net payment.
13. The deferred tax liabilities and deferred tax assets that may be netted must exclude amounts that have been used to adjust:
 - (a) goodwill and intangible assets; and
 - (b) defined benefit superannuation assets.

¹³ Any gains on hedges are to be deducted and any losses on hedges added back to Common Equity Tier 1 Capital.

¹⁴ Excluding any deferred tax liabilities that have already been netted off elsewhere in accordance with this Prudential Standard.

14. In order to apply the treatment in paragraph 10 of this Attachment, a private health insurer must:
- (a) have procedures in place to monitor changes in relevant laws and taxation practices that may affect the written opinions it is required to obtain covering netting of deferred tax assets and deferred tax liabilities; and
 - (b) ensure that the written opinions are updated in the event of changes in laws or taxation practices overseas that could materially impact on overseas taxation authorities continuing to allow netting of deferred tax assets and deferred tax liabilities.

Gains and losses arising from changes in own creditworthiness

15. A private health insurer must eliminate all unrealised gains and losses that have resulted from changes in the value of liabilities (including capital instruments) and any associated embedded derivatives due to changes in the private health insurer's own creditworthiness. Additional Tier 1 and Tier 2 Capital instruments must continue to be measured for capital adequacy purposes at their contractual values. Additional Tier 1 Capital and Tier 2 Capital instruments can be hedged in accordance with accounting standards.

Goodwill and other intangibles

16. Subject to paragraph 18 of this Attachment, a private health insurer must deduct the following, net of any associated deferred tax assets and deferred tax liabilities that would be extinguished if the assets involved become impaired or derecognised under Australian Accounting Standards:
- (a) goodwill and any other intangible assets¹⁵ arising from an acquisition, net of adjustments to profit or loss reflecting any changes arising from 'impairment' of goodwill; and
 - (b) other intangible assets net of adjustments to profit or loss reflecting amortisation and impairment. Intangible assets are as defined in Australian Accounting Standards and include capitalised expenses and capitalised transaction costs. These include, but are not limited to:
 - (i) costs associated with debt raisings and other similar transaction-related costs that are capitalised as an asset;
 - (ii) costs associated with issuing capital instruments if not already charged to profit and loss;
 - (iii) capitalised information technology software costs; and
 - (iv) other capitalised expenses including capitalised expenses of a general nature such as strategic business development initiatives.

¹⁵ Includes goodwill and intangibles attributable to investments in subsidiaries, joint ventures and associates. For the purposes of this Prudential Standard, a joint operation (as defined under *Australian Accounting Standard AASB 11 Joint Arrangement*) is to be treated as a joint venture.

These include, in addition to the above listed items, other forms of transaction costs and like costs that are required to be deferred/capitalised and amortised as part of the measurement of assets and liabilities under Australian Accounting Standards.

17. The balance of any transaction costs and like items that are capitalised and deferred as an asset must be netted off against the balance of any income deferred as a liability relating to the products giving rise to the capitalised transaction costs (i.e. only deferred costs and income in particular product portfolios may be netted). Any net balance of capitalised transaction costs must be deducted from Common Equity Tier 1 Capital in accordance with this Prudential Standard. Any surplus of fee income received from sources other than the insurer's health insurance policies over deferred costs may be included in Common Equity Tier 1 Capital provided the fee income received satisfies the criteria in paragraph 35 of this Prudential Standard. Otherwise, up-front fee income received from sources other than the insurer's health insurance policies must not be added to capital.
18. An investment in a subsidiary, joint venture or associate that:
 - (a) is operationally independent;
 - (b) represents a genuine arm's length investment;
 - (c) is not subject to prudential capital requirements; and
 - (d) does not undertake '**health insurance business**' or business related to health insurance business¹⁶;

does not have its intangible assets (including the intangible component that could arise after or outside of acquisition) deducted under paragraph 16 of this Attachment.

Superannuation funds

19. A private health insurer must deduct any surplus in a defined benefit superannuation fund, of which the private health insurer is an employer-sponsor, unless otherwise approved in writing by APRA. The surplus must be net of any associated deferred tax liability that would be extinguished if the assets involved become impaired or derecognised under Australian Accounting Standards. A private health insurer may apply to APRA to include a surplus as an asset for capital adequacy purposes where the private health insurer is able to demonstrate unrestricted and unfettered access to a superannuation fund surplus in a timely manner. Subject to APRA approval the private health insurer may include the surplus in its capital base. This surplus will no longer be required to be deducted from Common Equity Tier 1 Capital.

¹⁶ Entities that undertake business related to health insurance business include entities that provide a financing role to health insurance business, private health insurance intermediaries and service companies. It also includes entities that source a significant amount of business from the private health insurer or its policyholders.

20. A private health insurer must deduct any deficit in a defined benefit superannuation fund of which a private health insurer is an employer-sponsor and that is not already reflected in Common Equity Tier 1 Capital.

Reinsurance assets

21. A private health insurer must deduct all reinsurance assets¹⁷ (if positive) reported in relation to each reinsurance arrangement that, subject to a six month grace period from risk inception, does not comprise an executed and legally binding contract.

Investments in subsidiaries, joint ventures and associates

22. A private health insurer must make a deduction for investments in subsidiaries, joint ventures and associates that are subject to regulatory capital requirements. The amount of the deduction is the lesser of the private health insurer's share of the regulatory capital requirements¹⁸ and the value of the investment that is recorded on the private health insurer's balance sheet after adjustment for any intangible component in accordance with paragraphs 16 and 18 of this Attachment. This deduction must be applied after any deduction for intangibles in the investment in accordance with paragraphs 16 and 18 of this Attachment.
23. For the purposes of the deduction in paragraph 22 of this Attachment, the regulatory capital requirement of the investment is:
- (a) the prescribed capital amount if the investment is in a private health insurer as defined under the Act; or
 - (b) the equivalent amount to the prescribed capital amount if the investment is an entity carrying on private health insurance business in a foreign jurisdiction; or
 - (c) a comparable regulatory capital requirement as agreed with APRA.¹⁹
24. If the investment subject to the deduction in paragraph 22 of this Attachment is a **non-operating holding company** (NOHC), the private health insurer must 'look-through' the investment to the value and regulatory capital requirements of the entity/entities owned by the NOHC.

Assets under a fixed or floating charge

25. A private health insurer must deduct all assets of the private health insurer that are under a fixed or floating charge,²⁰ mortgage or other security to the extent of

¹⁷ For the purposes of this Prudential Standard, 'reinsurance assets' refers to reinsurance assets net of doubtful debts.

¹⁸ The private health insurer's share of the regulatory capital requirements is determined by applying the ownership of the subsidiary, joint venture or associate (as relevant) to the total regulatory capital requirement of the investment.

¹⁹ Examples of the entities that are subject to a comparable regulatory capital requirement are **authorised deposit-taking institutions**, general insurers and life companies.

²⁰ 'Charge' means a charge created in any way and includes a mortgage or an agreement to give or execute a charge or mortgage, whether upon demand or otherwise.

the indebtedness secured on those assets. This deduction may be reduced by the amount of any liability for the charge that is recognised on the private health insurer's balance sheet.

Fair value adjustments

26. A private health insurer may measure its non-financial assets, short-term receivables, and intercompany receivables and payables using the requirements in the Australian Accounting Standards rather than fair value.
27. A private health insurer must deduct the difference between fair value and the reported value of each asset. This deduction can be a negative amount (that is, an addition to Common Equity Tier 1 Capital) if fair value exceeds reported value.
28. A private health insurer must make any other deduction required by APRA in writing where APRA considers that fair values are not prudent or reliable.

Other adjustments

29. A private health insurer must make any other deductions required under any other Prudential Standard.

Regulatory adjustments to the net assets of a health benefits fund or general fund

30. The amount of net assets to be included in the capital base of a health benefits fund or general fund of a private health insurer must be calculated after making deductions for all regulatory adjustments to Common Equity Tier 1 Capital required under this Attachment.
31. In determining the deduction for deferred tax assets net of deferred tax liabilities, a private health insurer may assume that tax benefits in one fund can be offset against deferred tax liabilities in another health benefits fund or the general fund, subject to the offset only being used once in the calculation of the capital base for the funds.

Attachment C – Criteria for inclusion in Additional Tier 1 Capital

1. To be classified as Additional Tier 1 Capital, an instrument must satisfy all the criteria in this Attachment.
2. The instrument must be paid-up and the amount must be, irrevocably received by the issuer.
3. The instrument represents, prior to any conversion to Common Equity Tier 1 Capital (refer to Attachment E), the most subordinated claim in liquidation of the issuer after Common Equity Tier 1 Capital instruments.
4. The paid-up amount of the instrument, or any future payments related to the instrument, is neither secured nor covered by a guarantee of the issuer or related entity, or other arrangement that legally or economically enhances the seniority of the holder's claim. The instrument may not be secured or otherwise subject to netting or offset claims on behalf of the holder or the issuer of the instrument.
5. The principal amount of the instrument is perpetual (i.e. it has no maturity date).²¹
6. The instrument contains no step-ups or other incentives to redeem. The issuer and any other member of a group to which the issuer belongs must not create an expectation at issuance that the instrument will be bought back, redeemed or cancelled. The contractual terms of the instrument must not provide any feature that might give rise to such an expectation.²²
7. The instrument may only be callable at the initiative of the issuer and only after a minimum of five years from the date on which the issuer irrevocably receives the proceeds of payment for the instrument. The issuer:
 - (a) must receive prior written approval from APRA to exercise a call option;
 - (b) must not do anything that creates an expectation that a call will be exercised; and
 - (c) must not exercise a call unless:
 - (i) the issuer, prior to or concurrent with the exercise of the call, replaces the instrument with a capital instrument of the same or better quality, and the replacement of the instrument is done under conditions that are sustainable for the income capacity of the issuer; or

²¹ An instrument may be treated as perpetual if it will mandatorily convert to ordinary shares at a pre-defined date after five years from issue. Instruments with maturity dates and automatic roll-over features do not qualify as perpetual instruments.

²² Conversion from a fixed rate to a floating rate (or vice versa) in combination with a call option without any increase in the credit spread is not considered an incentive to redeem. However, the private health insurer must not otherwise do anything to create an expectation that the call will be exercised.

- (ii) the private health insurer meets the requirements relating to reductions in capital in HPS 110.
- 8. The instrument may provide for multiple call dates after five years. However, the specification of multiple call dates must not act to create an expectation that the instrument will be redeemed upon any call date.
- 9. An issuer must:
 - (a) have full discretion at all times to cancel distributions/payments on the instrument.²³ Any waived distributions are non-cumulative (i.e. are not required to be made up by the issuer at a later date, or are otherwise not made up by the issuer). The instrument must not provide for payment of a higher dividend or interest rate if dividend or interest payments are not made on time, or a reduced dividend or interest rate if such payments are made on time;
 - (b) ensure that cancellation of discretionary distributions/payments is not an event of default. Holders of the instruments must have no right to apply for the winding-up or administration of the issuer, or cause a receiver, or receiver and manager, to be appointed in respect of the issuer on the grounds that the issuer fails to make, or is or may become unable to make, a distribution on the instruments;
 - (c) have full access to cancelled distributions/payments to meet obligations as they fall due; and
 - (d) ensure that cancellation of distributions/payments do not impose restrictions on the issuer, or any other member of the group to which the issuer belongs, except in relation to distributions/payments or redemptions/buybacks on Common Equity Tier 1 Capital instruments.
- 10. Distributions on the instrument are paid out of distributable items of the issuer, and the instrument must not provide for payments to investors other than in the form of a cash payment. The level of distributions must not be tied or linked to the credit standing of the issuer.
- 11. The instrument cannot have a credit sensitive distribution/payment feature (i.e. a distribution/payment that is reset based in whole or part on the credit standing of the issuer or the group or any other member of the group to which it belongs). An instrument may utilise a broad index as a reference rate for distribution or payments calculation purposes. Where an issuer is a reference entity in the determination of the reference rate, the reference rate must not exhibit any significant correlation with the issuer's credit standing. APRA may require a private health insurer to exclude an instrument from Additional Tier 1 Capital where it considers that the reference rate is sensitive to the credit standing of the issuer.

²³

An instrument may not provide for investors upon non-payment of a distribution to convert an Additional Tier 1 Capital instrument, and the amount of any unpaid dividend or interest into ordinary shares or mutual equity interests.

12. The instrument cannot contribute to liabilities exceeding assets if such a balance sheet test forms part of any national insolvency law applying in the jurisdiction of issue. The issue documentation must specify that the insolvency law that applies is the law of the place of incorporation of the issuer.²⁴
13. The paid-up amount of the instrument is classified as equity under relevant accounting standards.
14. The instrument is directly issued by the issuer, and, except where otherwise permitted in this Prudential Standard, the issuer, any other member of a group to which the issuer belongs, or any related entity²⁵ cannot have purchased or directly or indirectly²⁶ funded the purchase of the instrument.
15. Where the terms of the instrument provide the ability (even in contingent circumstances) to substitute the issuer of the Additional Tier 1 Capital instruments, or the issuer of the ordinary shares into which they convert (i.e. to replace the private health insurer with another party), the relevant documentation must set out the mechanism to ensure that there will be a capital injection into the private health insurer to replace the transferred capital instrument. The capital injection must occur at least simultaneously with the substitution and must be unconditional. The capital injection must be of equal or better quality capital and at least the same amount as the original issue, unless otherwise approved by APRA.
16. The rate of dividend or interest on the instrument, or the formulae for calculating dividend or interest payments, must be predetermined and set out in the issue documentation.
17. The instrument includes provisions which comply with loss absorption requirements at the point of non-viability as required by Attachment E to this Prudential Standard.
18. The instrument is clearly and separately disclosed in the issuer's financial statements and in any consolidated financial statements.
19. The instrument must not include the following clauses:
 - (a) a cross-default clause linking the issuer's obligations under any debt instrument or other capital instrument to default by the issuer, or default by another party (related or otherwise), under the instrument itself; or
 - (b) an event of default clause specifying an event relating to any debt instrument or other capital instrument of the issuer, that brings the issuer into default under the instrument itself.

²⁴ If an overseas branch of a health insurer in a foreign jurisdiction where insolvency law is different from the jurisdiction where the parent entity is based, issue documentation must specify that the insolvency law in the parent's jurisdiction will apply.

²⁵ This does not preclude a parent entity of the private health insurer from holding the instrument where the instrument is directly issued by the private health insurer to the parent entity.

²⁶ Indirect exposures represent exposures that will result in a loss to the private health insurer substantially equivalent to any loss in the direct holdings.

For the purposes of paragraph 19(b) an event of default clause includes a clause specifying any of the following events:

- (i) the exercise or non-exercise of discretions within the debt instrument or other capital instrument;
- (ii) the adverse event or change, however so described or determined, occurring in respect of the debt instrument or other capital instrument; or
- (iii) any consequence arising from, or any action taken or intended to prevent,²⁷ the above events or default by the issuer under the debt instrument or other capital instrument,

but does not include a clause specifying the irrevocable winding-up (that is, either by way of an effective resolution by shareholders or members for winding-up, or a court order has been made and the time for the appeal of the decision has passed) of the issuer.

20. The issue documentation must clearly and prominently state:

- (a) the instrument is perpetual;
- (b) the instrument is unsecured;
- (c) the subordinated nature of the instrument and that neither the issuer nor the holder of the instrument is allowed to exercise of any contractual rights of set-off;
- (d) the instrument is not subject to netting;
- (e) the issuer cannot buy back, repurchase or redeem the instrument other than in terms permitted under this Prudential Standard;
- (f) if relevant, the application of requirements for loss absorption at the point of non-viability under Attachment E to this Prudential Standard; and
- (g) that the issuer has full discretion over the timing and amount of any distributions paid on the instrument, including not paying a distribution.

21. For the purposes of paragraph 9 of this Attachment, failure to make a distribution or payment must not trigger any restrictions²⁸ on the issuer other than its ability

²⁷ For example, by way of a scheme of arrangement.

²⁸ No restrictions on payment of distributions, or any restrictions on redemptions or buyback of Common Equity Tier 1 Capital instruments may be applied to: i) any existing holding company of the issuer or ii) any potential future holding company of the issuer, where the holding company does not undertake the role of the issuer of the instrument. This includes situations where a future holding company may be substituted as the issuer of ordinary shares on conversion, but not substituted as the issuer of the instrument.

to pay a distribution on Common Equity Tier 1 Capital instruments²⁹ or to redeem such instruments. Such ‘stopper’ provisions must not:

- (a) impede the full discretion of the issuer at all times to cancel distributions/payments on the instrument or act in a way that could hinder the recapitalisation of the issuer;
- (b) prevent payment on another instrument where such payment was not fully discretionary;
- (c) prevent distribution to holders of Common Equity Tier 1 Capital instruments for a period that extends beyond the point in time the distributions/payments on the Additional Tier 1 Capital instruments are resumed;
- (d) impede the normal operation of the issuer or any restructuring activity (including acquisitions or disposals); or
- (e) hinder any recapitalisation of the issuer.

A ‘stopper’ provision may, however, act to prohibit actions that are equivalent to payment of dividend or interest, such as a private health insurer undertaking discretionary buybacks of ordinary shares.

22. An instrument must not include any provision that permits an additional distribution or payment to be made. Any structuring of a distribution or payment as a bonus payment, or any arrangement to compensate for unpaid distributions or payments is also prohibited. An instrument cannot provide for investors to convert an instrument into ordinary shares or mutual equity instruments upon non-payment of a distribution.
23. For the purposes of paragraph 6 of this Attachment, an incentive or expectation to call or otherwise redeem an Additional Tier 1 Capital instrument includes, but is not limited to:
 - (a) a call option combined with a requirement, or an investor option, to convert the instrument into ordinary shares if the call is not exercised;
 - (b) a call option combined with a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate less the swap rate (i.e. the fixed rate paid to the call date to receive the second reference rate);
 - (c) a call option combined with an increase in redemption amount in the future;
 - (d) automatic redemption or an option to redeem following a change of control event;

²⁹ Any reference to Common Equity Tier 1 Capital instruments in this paragraph includes a reference to mutual equity interests issued in accordance with Attachment F.

- (e) mandatory conversion within the first five years of issue, except conversions arising from change of control, regulatory or tax events;
 - (f) any arrangement whereby an investor will become subject to: (i) known tax or charges, or to (ii) known higher tax or charges than they would have had to pay before, following a call date and the issuer is required to compensate an investor for any payment of additional tax or charges (refer to paragraph 27 of this Attachment); or
 - (g) an application of maximum or minimum rates on distributions.
24. A call option and a provision to convert into ordinary shares will not constitute an incentive to redeem provided there is at least two years from the date upon which the private health insurer may have an option to call the instrument to the nearest subsequent date upon which that conversion option may be exercised.
25. Calling an instrument and replacing it with an instrument with a higher credit spread or that is otherwise more expensive is deemed to create the expectation that the issuer will exercise a call option on other outstanding Additional Tier 1 Capital instruments or Tier 2 Capital instruments with call options, unless the issuer can satisfy APRA as to the economic and prudential rationale and that such an action will not create an expectation that other instruments will be called in similar circumstances.
26. An instrument must provide for the immediate, automatic and permanent revocation of a call notice upon a non-viability event. A call option cannot be exercised in anticipation of a non-viability event.
27. An instrument may only provide for a call within the first five years of issuance as a result of a tax or regulatory event. A tax or regulatory event is confined to:
- (a) changes in statute and regulations (and judicial and administrative actions pertaining to the application of a statute or regulations) which impact a specific capital instrument;
 - (b) changes related only to the jurisdictions relevant to an instrument;
 - (c) changes that have occurred, or will occur, as opposed to changes that may occur; and
 - (d) changes which impact the issuer of an affected capital instrument. Changes in tax or regulation impacting the holder of a capital instrument will not constitute a tax or regulatory event for the purposes of this Attachment.
28. APRA may require a private health insurer not to exercise a call where it relates to a tax or regulatory event if APRA forms the view that the private health insurer was in a position to anticipate the tax or regulatory event when the instrument was issued. In order for a call to be exercised the issuer must comply with the provisions in paragraph 7 of this Attachment.

29. Where an Additional Tier 1 Capital instrument provides for conversion into ordinary shares,³⁰ the issue documentation must:
- (a) specify the number of ordinary shares to be received upon conversion, or specify the conversion formula for determining the number of ordinary shares received;
 - (b) provide for the number of ordinary shares to be received under the conversion formula specified in 29(a) of this paragraph to be capable of being ascertained immediately and objectively;
 - (c) set the maximum number of ordinary shares received so as not to exceed the price of the Additional Tier 1 Capital instrument at the time of its issue divided by 20 per cent of the private health insurer's³¹ ordinary share price³² at the same time. However, this cap does not apply if the only holder of the converting capital instrument is a listed parent entity which wholly-owns the issuer of the capital instruments. In calculating the ordinary share price at time of issue, adjustments may be made for subsequent ordinary share splits, bonus issues and similar transactions. In calculating the ordinary share price at the time of issue, adjustments may only be made for transactions that change the number of shares on issue without involving an exchange of value and which have no impact on capital.³³ Adjustments must exclude transactions involving cash payments or other compensation to, or by, holders of the ordinary shares or the issuer of the capital instrument. The method of calculation of adjustments must be fixed in issue documentation and adjustments must be capable of being ascertained immediately and objectively; and
 - (d) where a capital instrument is denominated in foreign currency, provide a clear method for determining: (i) the exchange rate to be used in calculating the number of ordinary shares to be issued upon conversion (e.g. the prevailing exchange rate); and (ii) the exchange rate to be used in calculating the maximum number of ordinary shares which could be issued on conversion (issue date exchange rate). Documentation must include how exchange rates would be determined, if at a time of conversion, foreign exchange markets were to be closed at the intended time of conversion.

³⁰ Conversion must be into the ordinary shares of the private health insurer or its parent entity, which must be listed at the time of issue. For an unlisted private health insurer with no listed upstream entity at the time the instrument is issued, the instrument is to be converted into unlisted ordinary shares of the private health insurer. Where an unlisted private health insurer issues the instrument to its listed parent entity, conversion may be into unlisted ordinary shares of the private health insurer.

³¹ Reference to private health insurer captures any entity whose ordinary shares are issued as a result of conversion provisions.

³² For an unlisted private health insurer that has no listed parent entity at the time of issue, the ordinary share price is based on the book value per share at the time of issue.

³³ This may include subsequent ordinary share splits, bonus issues and share consolidations.

30. For mutually owned private health insurers, where an Additional Tier 1 Capital instrument provides for conversion into mutual equity interests, the issue documentation must:
- (a) Specify the number of mutual equity interests to be received upon conversion, or specify the conversion formula for determining the number of mutual equity interests received;
 - (b) Provide for the number of mutual equity interests to be received under the formula specified in (a) of this paragraph to be capable of being ascertained immediately and objectively; and
 - (c) Set the maximum number of mutual equity interests received such that the aggregate nominal value of the interests received cannot exceed, at the date of conversion, the nominal value of the Additional Tier 1 Capital instrument converted.
31. Conversion must generate an unequivocal addition to Common Equity Tier 1 Capital of the private health insurer under Australian Accounting Standards.
32. In issuing Additional Tier 1 Capital instruments a private health insurer may, within the category of Additional Tier 1 Capital:
- (a) differentiate between instruments as to whether an instrument is required to convert or be written-off in the first instance; and
 - (b) provide for a ranking under which Additional Tier 1 Capital instruments will be converted or written off.
33. Where an Additional Tier 1 Capital instrument provides for a write-off mechanism, this mechanism must be structured so that:
- (a) the claim of the holder of the instrument on liquidation of the issuer is reduced to, or below, the value of the written-off instrument;
 - (b) the amount of the instrument that may be paid if a call is exercised is irrevocably reduced to the value of the instrument after write-off;
 - (c) there is an immediate and unequivocal addition to the Common Equity Tier 1 Capital of the private health insurer; and
 - (d) the distribution or payments payable on the instrument must be permanently reduced (i.e. distributions or payments must be calculated at no more than the rate set for the written-off value of the instrument).
34. The instrument must not include a mechanism that would require a holder to sell the instrument to the issuer or a related entity of the issuer other than as part of a call option or redemption of the instrument. A mechanism that requires a holder to sell the instrument to a nominated party other than the issuer or a related entity of the issuer will not constitute an incentive to redeem provided there is at least two years from the date upon which the holder is required to sell the instrument to the nearest subsequent date upon which conversion may be exercised.

35. Where an instrument is drawn down in a series of tranches, it must meet the requirements in this Prudential Standard as if each tranche is a separate Additional Tier 1 Capital instrument in its own right.
36. The documentation of any debt instrument or any other capital instrument of the issuer of an Additional Tier 1 Capital instrument must not include any of the following clauses:
- (a) a cross-default clause linking the issuer's obligations under the Additional Tier 1 Capital instrument to default by the issuer under any of its other obligations, or default by another party (related or otherwise) under the debt or other capital instrument; or
 - (b) an event of clause specifying an event relating to the Additional Tier 1 Capital instrument that brings the issuer into default under the debt or other capital instrument.
37. For the purposes of paragraph 36(b) of this Attachment, an event of default clause includes a clause specifying any of the following events:
- (a) the exercise or non-exercise of discretions within the Additional Tier 1 Capital instrument;
 - (b) an adverse event or change, however so described or determined, occurring in respect of the Additional Tier 1 Capital instrument; or
 - (c) any consequence arising from, or any action taken to prevent,³⁴ the above events or a default by the issuer under the Additional Tier 1 Capital instrument,
- but does not include a clause specifying the irrevocable winding-up (that is, either by or an effective resolution by shareholders or members for winding-up, or a court order has been made, and the time for the appeal of the decision has passed) of the issuer.
38. Where issue documentation, or marketing of an instrument, or any ongoing dealings with investors in the instrument suggest the instrument has attributes not consistent with the eligibility requirements in this Attachment, the instrument will be ineligible to be included in the private health insurer's Additional Tier 1 Capital.
39. The instrument may be subject to the laws of a foreign country jurisdiction, except that the terms and conditions of the instrument that relate to non-viability conversion or write-off must be subject to the laws of an Australian jurisdiction.
40. Where the instrument is subject to the laws of a foreign country, the private health insurer must also ensure that the instrument satisfies all relevant eligibility criteria applicable to the instrument under this Attachment are enforceable under the laws of that jurisdiction.

³⁴ For example, by way of scheme of arrangement.

41. APRA may require the private health insurer to provide an independent expert opinion, addressed to APRA by a firm or practitioner of APRA's choice and at the private health insurer's expense, confirming that the instrument satisfies all applicable criteria for an Additional Tier 1 Capital instrument under this Prudential Standard.

Attachment D – Criteria for inclusion in Tier 2 Capital

1. To be classified as Tier 2 Capital, an instrument must satisfy all of the criteria in this Attachment.
2. The instrument must clearly indicate that it is subordinate to the interests of policy owners of a particular health benefits fund in the liquidation of the private health insurer.
3. The instrument must be paid-up and the amount must be irrevocably received by the relevant health benefits fund.
4. The paid-up amount of the instrument must be classified as a liability of the relevant health benefits fund under the relevant accounting standards.
5. The instrument represents, prior to any conversion to Common Equity Tier 1 Capital (refer to Attachment E to this Prudential Standard), the most subordinated claim in liquidation of the issuer after Common Equity Tier 1 Capital instruments and Additional Tier 1 Capital instruments.
6. The paid-up amount of the instrument, or any future payments related to the instrument, is neither secured nor covered by a guarantee of the issuer or related entity, or other arrangement that legally or economically enhances the seniority of the claim. The instrument may not be secured or otherwise subject to netting or offset of claims on behalf of the holder or the issuer of the instrument.
7. The principal amount of the instrument:
 - (a) has a minimum maturity of at least five years;³⁵ and
 - (b) is only recognised in Tier 2 Capital (and so in the capital base) in the five years prior to maturity on a straight-line amortised basis (refer to paragraph 23 of this Attachment).
8. The instrument contains no step-ups or other incentives to redeem. The issuer and any other member of a group to which the issuer belongs must not create an expectation at issuance that the instrument will be bought back, redeemed or cancelled before its contractual maturity. The contractual terms of the instrument must not provide any feature that might give rise to such an expectation.³⁶
9. The instrument may only be callable at the initiative of the issuer and only after a minimum of five years from the date on which the issuer irrevocably receives the proceeds of payment for the instrument. The issuer:

³⁵ Where an instrument has a defined maturity and provides for a mandatory roll-over the maturity of the instrument is deemed only to extend to the date upon which any roll-over may take effect.

³⁶ Conversion from a fixed rate to a floating rate (or vice versa) in combination with a call option without any increase in the credit spread is not considered an incentive to redeem. However, the private health insurer must not otherwise do anything to create an expectation that the call will be exercised.

- (a) must receive prior written approval from APRA to exercise a call option;
 - (b) must not do anything that creates an expectation that a call will be exercised; and
 - (c) must not exercise a call unless:
 - (i) the issuer, prior to or concurrent with the exercise of the call, replaces the instrument with a capital instrument of the same or better quality, and the replacement of the instrument is done at conditions that are sustainable for the income capacity of the issuer; or
 - (ii) the private health insurer meets the requirements relating to reductions in capital in HPS 110.
10. The instrument may provide for multiple call dates after five years. However, the specification of multiple call dates must not act to create an expectation that the instrument will be redeemed upon any call date.
11. The instrument must confer no rights on holders to accelerate the repayment of future scheduled payments (coupon or principal) except in bankruptcy (including winding-up) and liquidation. Winding-up of the private health insurer must be irrevocable (that is, either by way of an effective resolution by the members of a mutual for winding-up, or a court orders has been made, and the time for appeal of the decision has passed). The making of an application for winding-up or the appointment of a terminating manager, or other external administrator including the exercise of APRA's powers under Part 3, Divisions 6 to 8 of the Act, must not be sufficient to accelerate repayment of the instrument.
12. The instrument must not provide for payment to investors other than in the form of a cash payment.
13. The instrument cannot have a credit sensitive distribution/payment feature (i.e. a distribution/payment that is reset based in whole or part on the credit standing of the issuer or the group or any other member of the group to which it belongs). The instrument may utilise a broad index as a reference rate for distribution or payments calculation purposes. Where an issuer is a reference entity in the determination of the reference rate, the reference rate must not exhibit any significant correlation with the issuer's credit standing. APRA may require a private health insurer to exclude an instrument from treatment as Tier 2 Capital where APRA considers that the reference rate is sensitive to the credit standing of the issuer.
14. The instrument is directly issued by the issuer, and, except where otherwise permitted in this Prudential Standard, the issuer, any other member of a group to which the issuer belongs, or any other related entity³⁷ cannot have purchased or

³⁷ This does not preclude a parent entity of the private health insurer from holding the instrument where the instrument is directly issued by the private health insurer to the parent entity.

directly or indirectly³⁸ funded the purchase of the instrument or be funding the purchase of the instrument.

15. If the terms of the instrument provide the ability (even in contingent circumstances) to substitute the issuer of the Tier 2 Capital instrument, or the issuer of ordinary shares into which they convert (i.e. to replace the private health insurer with another party), the relevant documentation must set out the mechanism to ensure that there will be a capital injection into the private health insurer and relevant fund to replace the transferred capital instrument. The replacement capital injection must occur at least simultaneously with the substitution and must be unconditional. The capital injection must be of equal or better quality capital and at least the same amount as the original issue, unless otherwise approved by APRA.
16. The rate of dividend or interest on the instrument, or the formulae for calculating dividend or interest payments, must be predetermined and set out in the issue documentation.
17. If an issuer defaults under the terms of the instrument, remedies available to the holders must be limited to actions for specific performance, recovery of amounts currently outstanding or the winding-up of the issuer. The amounts that may be claimed in the event that the issuer defaults may include any accrued unpaid dividends and interest, including payment of market interest on these unpaid amounts. Any claim against the issuer for unpaid dividends and interest must be the most subordinated claims in liquidation of the issuer after Common Equity Tier 1 Capital instruments and Additional Tier 1 Capital instruments.
18. The instrument must not provide for payment of a higher dividend or interest rate if dividend or interest payments are not made on time, or a reduced dividend or interest rate if such payments are made on time.
19. The instrument includes provisions which comply with the loss absorption requirements at the point of non-viability in accordance with Attachment E to this Prudential Standard.
20. The instrument is clearly and separately disclosed in the issuer's financial statements.
21. The instrument must not include any of the following clauses:
 - (a) a cross-default clause linking the issuer's obligations under any debt instrument or other capital instrument to default by the issuer, or default by another party (related or otherwise), under the instrument itself; or
 - (b) an event of default clause specifying an event relating to any debt instrument or other capital instrument (other than the instrument itself) of the issuer, that brings the issuer into default under the instrument itself.

³⁸ Indirect exposures represent exposures that will result in a loss to the private health insurer substantially equivalent to any loss in the direct holding.

For the purposes of paragraph 21(b), an event of default includes a clause specifying the following events:

- (i) the exercise or non-exercise of discretions within the debt instrument or other capital instrument;
- (ii) an adverse event or change, however so described or determined, occurring in respect of the debt instrument or other capital instrument; and
- (iii) any consequence arising from, or any action taken or intended to prevent,³⁹ the above events or a default by the issuer under the debt instrument or other capital instrument,

but does not include a clause specifying the irrevocable winding-up (that is, either by way of effective resolution by shareholders or members for winding-up, or a court order has been made, and the time for appeal of the decision has passed) of the issuer.

22. Issue documentation must clearly and prominently state:

- (a) the maturity date of the instrument at which time the issuer is required to redeem the instrument;
- (b) the unsecured and subordinated nature of the instrument, and that neither the issuer nor the holder of the instrument is allowed to exercise any contractual rights of set-off;
- (c) the instrument is not subject to netting;
- (d) that the issuer cannot buy back, purchase or redeem the instrument other than in the terms permitted under this Prudential Standard;
- (e) the application of requirements relating to loss absorption at the point of non-viability under Attachment E to this Prudential Standard.

23. The amount of an instrument eligible for inclusion in Tier 2 Capital is to be amortised on a straight-line basis at a rate of 20 per cent per annum over the last four years to maturity as follows:

³⁹ For example, by way of a scheme of arrangement.

Years to maturity	Amount eligible for inclusion in Tier 2 Capital
More than 4	100 per cent
Less than and including 4 but more than 3	80 per cent
Less than and including 3 but more than 2	60 per cent
Less than and including 2 but more than 1	40 per cent
Less than and including 1	20 per cent

24. For the purposes of paragraph 8 of this Attachment, an incentive or expectation to call or otherwise redeem a Tier 2 Capital instrument includes, but is not limited to:
- (a) a call option combined with a requirement, or an investor option, to convert the instrument into ordinary shares if the call is not exercised;
 - (b) a call option combined with a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate less the swap rate (i.e. the fixed rate paid to the call date to receive the second reference rate);
 - (c) a call option combined with an increase in the redemption amount in the future;
 - (d) automatic redemption or an option to redeem following a change of control event;
 - (e) mandatory conversion within the first five years of issue, except conversions arising from change of control, regulatory or tax events;
 - (f) any arrangement whereby an investor will become subject to: (i) known tax or charges; or to (ii) known higher tax or charges than they would have had to pay before, following a call date and the issuer is required to compensate an investor for any payment of the additional tax or charges (refer to paragraph 28 of this Attachment); or
 - (g) an application of maximum or minimum rates on distributions.
25. A call option and a provision to convert into ordinary shares will not constitute an incentive to redeem provided there is at least two years from the date upon which the private health insurer may have an option to call the instrument to the nearest subsequent date upon which that conversion option may be exercised.
26. Calling an instrument and replacing it with an instrument with a higher credit spread or that is otherwise more expensive is deemed to create the expectation

that the issuer will exercise a call option on other outstanding Tier 2 Capital instruments and Additional Tier 1 Capital instruments with call options, unless the issuer can satisfy APRA as to the economic and prudential rationale and that such an action will not create an expectation that other instruments will be called in similar circumstances.

27. A Tier 2 Capital instrument must provide for the immediate, automatic and permanent revocation of a call notice upon a non-viability event (refer to Attachment E to this Prudential Standard). A call option cannot be exercised in anticipation of a non-viability event.
28. A Tier 2 Capital instrument may only provide for a call within the first five years of issuance as a result of a tax or regulatory event. A tax or regulatory event is confined to:
 - (a) changes in statute and regulations (and judicial and administrative actions pertaining to the application of a statute or regulations) which impact a specific capital instrument;
 - (b) changes related only to the jurisdictions relevant to an instrument;
 - (c) changes that have occurred, or will occur, as opposed to changes that may occur; or
 - (d) changes which impact the issuer of an affected capital instrument. Changes in tax or regulation impacting the holder of a capital instrument will not constitute a tax or regulatory event for the purposes of this Attachment.
29. APRA may require a private health insurer not to exercise a call where it relates to a tax or regulatory event if APRA forms the view that the private health insurer was in a position to anticipate the tax or regulatory event when the instrument was issued. In order for a call to be exercised the issuer must comply with the provisions in paragraph 9 of this Attachment.
30. Where a Tier 2 Capital instrument provides for conversion into ordinary shares,⁴⁰ the issue document must:
 - (a) specify the number of ordinary shares to be received upon conversion or specify the conversion formulae for determining the number of ordinary shares received;
 - (b) provide for the number of ordinary shares to be received under the conversion formula specified in (a) of this paragraph to be capable of being ascertained immediately and objectively;

⁴⁰ Conversion must be into the ordinary shares of the private health insurer or its parent entity, which must be listed at the time of issue. For an unlisted private health insurer with no listed upstream entity at the time the instrument is issued, the instrument is to be converted into unlisted ordinary shares of the private health insurer. Where an unlisted private health insurer issues the instrument to its listed parent entity, conversion may be into unlisted ordinary shares of the private health insurer.

- (c) set the maximum number of ordinary shares received so as not to exceed the price of the Tier 2 Capital instrument at the time of its issue divided by 20 per cent of the private health insurer's⁴¹ ordinary share price⁴² at the same time. However, this cap does not apply if the only holder of the converting capital instrument is a listed parent entity which wholly-owns the issuer of the capital instrument. In calculating the ordinary share price at time of issue:
 - (i) adjustments may be made for subsequent ordinary share splits, bonus issues and share consolidations;
 - (ii) adjustments may only be made for transactions that change the number of shares on issue without involving an exchange of value and which have no impact on capital;
 - (iii) adjustments must exclude transactions involving cash payments or other compensation to, or by, the holder of ordinary shares or the issuer of the capital instrument; and
 - (iv) the method of calculation of adjustments must be fixed in issue documentation and adjustments must be capable of being ascertained immediately and objectively; and
 - (d) where a capital instrument is denominated in foreign currency, provide a clear method for determining: (i) the exchange rate to be used in calculating the number of ordinary shares to be issued upon conversion (e.g. the prevailing exchange rate); and (ii) the exchange rate to be used in calculating the maximum number of ordinary shares which could be issued on conversion (issue date exchange rate). Documentation must include how exchange rates would be determined, if at a time of conversion, foreign exchange markets were to be closed at the intended time of conversion.
31. For mutually owned private health insurers, where a Tier 2 Capital instrument provides for conversion into mutual equity interests, the issue documentation must:
- (a) specify the number of mutual equity interests to be received upon conversion, or specify the conversion formula for determining the number of mutual equity interests received;
 - (b) provide for the number of mutual equity interests to be received under the formula specified in (a) of this paragraph to be capable of being ascertained immediately, objectively, and without further steps; and

⁴¹ Reference to private health insurer in this context captures any entity whose ordinary shares are issued as a result of conversion provisions.

⁴² For an unlisted private health insurer that has no listed parent entity at the time of issue, the ordinary share price is based on the book value per share at the time of issue.

- (c) set the maximum number of mutual equity interests received such that the aggregate nominal value of the interests received cannot exceed, at the date of conversion, the nominal value of the Tier 2 Capital instrument converted.
- 32. Conversion must generate an unequivocal addition to Common Equity Tier 1 Capital of the private health insurer under Australian Accounting Standards.
- 33. In issuing Tier 2 Capital instruments, a private health insurer may, within the category of Tier 2 Capital;
 - (a) differentiate between instruments as to whether an instrument is required to convert or be written-off in the first instance; and
 - (b) provide a ranking under which Additional Tier 1 Capital instruments will be converted or written off.
- 34. Where a Tier 2 Capital instrument provides for a write-off mechanism, this mechanism must be structured so that:
 - (a) the claim of the instrument on liquidation of the issuer is reduced to, or below the value of the written-off instrument;
 - (b) the amount of the instrument that may be paid if a call is exercised is irrevocably reduced to the value of the instrument after write-off;
 - (c) there is an immediate and unequivocal addition to the Common Equity Tier 1 Capital of the private health insurer; and
 - (d) the distribution/payments payable on the instrument must be permanently reduced (i.e. distributions/payments must be calculated at no more than the rate set for the written-off value of the instrument).
- 35. The instrument must not include a mechanism that would require a holder to sell the instrument to the issuer or a related entity of the issuer other than as part of a call option or redemption of the instrument. A mechanism that requires a holder to sell the instrument to a nominated party other than the issuer or related entity of the issuer will not constitute an incentive to redeem provided there is at least two years from the date upon which the holder is required to sell the instrument to the nearest subsequent date upon which conversion may be exercised.
- 36. Where an instrument is drawn down in a series of tranches, it must meet the requirements in this Prudential Standard as if each tranche is a separate Tier 2 Capital instrument in its own right and the minimum original maturity of each tranche must be five years from the time proceeds of the issue are irrevocably received by the issuer.
- 37. The documentation of any debt instrument or other capital instrument of the issuer of a Tier 2 Capital instrument must not include any of the following clauses:
 - (a) a cross-default clause linking the issuer's obligations under the Tier 2 Capital instrument to default by the issuer under any of its obligations, or

default by another party (related or otherwise) under the debt instrument or other capital instrument; or

- (b) an event of default clause specifying an event relating to the Tier 2 Capital instrument that brings the issuer into default under the debt instrument or other capital instrument.

38. For the purposes of paragraph 3737(b), an event of default clause includes a clause specifying any of the following events:

- (a) the exercise or non-exercise of discretions within the Tier 2 Capital instrument;
- (b) an adverse event or change, however so described or determined, occurring in respect of the Tier 2 Capital instrument; or
- (c) any consequence arising from, or any action taken or intended to prevent⁴³ the above events or a default by the issuer under a Tier 2 Capital instrument

but does not include a clause specifying the irrevocable winding up (that is, either by way of an effective resolution by shareholders or members for winding up, or a court order has been made, and the time for appeal of the decision has passed) of the issuer.

- 39. Where issue documentation, marketing of an instrument, or any ongoing dealings with investors suggest that the instrument has attributes not consistent with the eligibility requirements in this Attachment for Tier 2 Capital instruments the instrument is ineligible to be included in the private health insurer's Tier 2 Capital.
- 40. The instrument may be subject to the laws of a foreign country, except that the terms of the instrument that relate to non-viability conversion or write-off (refer to Attachment E to this Prudential Standard) must be subject to the laws of an Australian jurisdiction.
- 41. Where the instrument is subject to the laws of a foreign country, the private health insurer must also ensure all relevant eligibility criteria applicable to the instrument under this Attachment is enforceable under the laws of that jurisdiction.
- 42. APRA may require the private health insurer to provide an independent expert opinion, addressed to APRA by a firm or practitioner of APRA's choice and at the private health insurer's expense, confirming that the instrument meets the requirements of this Prudential Standard.

⁴³ For example, by way of a scheme of arrangement.

Attachment E - Loss absorption at the point of non-viability: Additional Tier 1 and Tier 2 Capital instruments

1. An Additional Tier 1 Capital or Tier 2 Capital instrument must include a provision whereby upon the earliest occurrence of a non-viability trigger event, it will be immediately and irrevocably:
 - (a) converted into the ordinary shares of the private health insurer or its ultimate parent entity, which must be listed at the time the instrument is issued.⁴⁴ For an unlisted private health insurer with no listed upstream entity at the time the instrument is issued, the instrument is to be converted into unlisted ordinary shares of the private health insurer. Where an unlisted private health insurer issues the instrument to its listed parent entity, conversion may be into the unlisted shares of the private health insurer;
 - (b) converted into mutual equity interests; or
 - (c) written off.
2. A non-viability event is:
 - (a) in relation to a private health insurer when APRA notifies the private health insurer that APRA considers;
 - (i) conversion or write-off of a capital instrument is necessary because, without it, a particular health fund or the private health insurer would become non-viable; or
 - (ii) without a public sector injection of capital or equivalent support, a particular health fund or the private health insurer would become non-viable;
 - (b) subject to paragraphs 6 and 7 of this Attachment, where a private health insurer is a locally incorporated subsidiary private health insurer of a foreign entity, notification by the home regulator of the foreign entity to the foreign entity or the private health insurer that the home regulator considers that:
 - (i) conversion or write-off of capital instruments is necessary because without it, the foreign entity or the private health insurer would become non-viable; or

⁴⁴ For an unlisted private health insurer with no listed upstream entity at the time the instrument is issued, the instrument is to be converted into unlisted ordinary shares of the health insurer. Where an unlisted private health insurer issues the instrument to its listed parent entity, conversion may be into unlisted ordinary shares of the private health insurer.

- (ii) without a public sector injection of capital, or equivalent support, the foreign entity or the private health insurer would become non-viable.
- 3. Conversion or write-off of an Additional Tier 1 or Tier 2 Capital instrument must generate an unequivocal addition to the private health insurer's Common Equity Tier 1 Capital (for Additional Tier 1 and Tier 2 Capital instruments) and the net assets of the relevant fund (for Tier 2 Capital instruments) under Australian Accounting Standards.
- 4. For the purposes of conversion or write-off, in whole or in part, of an Additional Tier 1 Capital or Tier 2 Capital instrument as a result of a non-viability event, the amount to be converted must be the face value of the instrument or relevant part thereof. Dividends and interest associated with the instrument which have been converted or written off, but which are not yet due and payable must also be extinguished.
- 5. In order to comply with the immediate conversion or write-off in paragraph 1 to this Attachment, the instrument must be capable of conversion or write-off taking place at any time of day:
 - (a) during a business day; or
 - (b) on a day that is not a business day.
- 6. To qualify as eligible Additional Tier 1 or Tier 2 Capital, an instrument issued by a locally-incorporated private health insurer that is a subsidiary of a foreign entity must satisfy the requirements in this Attachment. A non-viability event of the private health insurer, however, need not trigger any loss absorption requirement upon the foreign parent.
- 7. A locally-incorporated private health insurer that is a subsidiary of a foreign entity may, either individually or as part of a group, also be subject to non-viability requirements applied by authorities in the overseas country of incorporation of the foreign parent, provided that the requirements are disclosed by the authorities, and issue documentation for the instrument discloses that the instrument is subject to potential loss as a result of the requirements. A locally-incorporated private health insurer that is a subsidiary of a foreign parent, is permitted to, but not required to, provide for the application of a non-viability event based on the non-viability requirements⁴⁵ applied to the foreign parent. As a result, a non-viability requirement applicable to the foreign parent may function as a non-viability event for the private health insurer itself in relation to Additional Tier 1 Capital or Tier 2 Capital instruments issued by the private health insurer.
- 8. When a non-viability event occurs in accordance with this Attachment, the amount of conversion or write off of Additional Tier 1 or Tier 2 Capital instruments is to be determined in accordance with paragraphs 10 and 11 of this Attachment. If a non-viability event occurs as a result of only host or home regulator or statutory non-viability requirements (refer to paragraph 2(b) of this

⁴⁵ Requirements may be applied by the home regulator or under statute.

Attachment), then the amount of conversion or write-off of Additional Tier 1 or Tier 2 Capital instruments issued by a locally incorporated private health insurer that is a subsidiary of a foreign parent will be determined by the relevant host or home regulator or statutory requirements.

9. The amount of an instrument that may be recognised in the private health insurer's Tier 1 and capital base is the minimum level of Common Equity Tier 1 Capital that would be generated by full conversion or write-off of the instrument on the occurrence of a non-viability event. In determining, at any point in time, the minimum level of Common Equity Tier 1 Capital that would be generated by conversion or write-off, the private health insurer must take into account any tax or other potential offsets which might impact the minimum level if conversion or write-off were to take place. Adjustments to the amount of an instrument included in Tier 1 Capital or capital base must be updated over time to reflect any change in the best estimates of the offset value. Where an instrument's primary loss absorption mechanism is conversion into ordinary shares, a private health insurer is not required to take into account any taxation effect resulting from write-off of the instrument in the event conversion was not achievable.
10. The aggregate amount of full or partial conversion or write-off of Additional Tier 1 or Tier 2 Capital instruments must, at a minimum, be no less than the lower of:
 - (a) the amount required to ensure the non-viability event no longer applies;⁴⁶
or
 - (b) the principal amounts of all instruments.
11. A private health insurer must carry out full conversion or write-off of its Additional Tier 1 Capital and Tier 2 Capital instruments unless APRA is satisfied that the aggregate amount of a partial conversion or partial write-off is sufficient to meet the requirements of paragraph 10 of this Attachment and a public sector injection of funds into the private health insurer would not be necessary. If a non-viability event no longer applies, unless otherwise required by APRA, further conversion or write-off of Additional Tier 1 Capital or Tier 2 Capital instruments need not be undertaken.
12. Where an Additional Tier 1 or Tier 2 Capital instrument provides for conversion into ordinary shares (or mutual equity interests), the private health insurer must ensure that at the time of issue and on a continuing basis, there are no legal or other impediments to issuing the relevant number of shares (or mutual equity instruments) and all necessary approvals have been obtained to effect conversion.
13. An Additional Tier 1 Capital or Tier 2 Capital instrument must unequivocally provide for the amount of the instrument to be immediately and irrevocably written-off (including termination of the right to receive ordinary shares, mutual equity interests, principal, dividends or interest) in the accounts of a private health

⁴⁶ Such a declaration would typically be provided, as appropriate, by APRA or another regulator or by way of statutory provisions.

insurer and result in an unequivocal additional to Common Equity Tier 1 Capital if, following a non-viability event, conversion of the instrument:

- (a) is not capable of being undertaken;
 - (b) has not been fully effected for any reason within five business days
 - (c) is not irrevocable; or
 - (d) will not result in an immediate and unequivocal increase in Common Equity Tier 1 Capital of the private health insurer
14. Issue documentation may provide for a ranking of conversion under which instruments may be converted or written-off upon a non-viability event, provided that the terms of the issue documentation do not impede the ability of the capital instrument to be immediately converted or written-off. Any ranking must provide for all Additional Tier 1 Capital instruments to be fully converted or written-off before any Tier 2 Capital instruments are required to be converted or written-off. Any conversion or write-off of the Tier 2 Capital instruments will only be necessary to the extent that conversion or write-off of the Additional Tier 1 Capital instruments is insufficient to permit a declaration that a non-viability event no longer applies.
15. Where an Additional Tier 1 or Tier 2 Capital instrument provides for conversion into ordinary shares or mutual equity interests when a non-viability event occurs, the conversion provisions in issue documentation must satisfy in the case of Additional Tier 1 Capital instruments the requirements of paragraphs 29 and 30 of Attachment C to this Prudential Standard, and, in the case of Tier 2 Capital instruments, the requirements in paragraphs 30 and 31 of Attachment D to this Prudential Standard
16. Where an Additional Tier 1 Capital or Tier 2 Capital instrument provides for a write-off of the instrument, upon a non-viability event, the write-off provisions in the issue documentation must satisfy the requirements in paragraph 33 in Attachment C to this Prudential Standard for an Additional Tier 1 Capital instrument, and the write-off provisions must satisfy paragraph 34 of Attachment D to this Prudential Standard for a Tier 2 Capital instrument.
17. The contractual terms and conditions of an Additional Tier 1 Capital or Tier 2 Capital instrument must provide that, on conversion or write-off of the instrument upon a non-viability event, any residual claims associated with the portion of the instrument converted or written-off, are not senior to claims associated with ordinary shares or mutual equity interests of the private health insurer and not senior to claims associated with ordinary shares or mutual equity interests of the parent entity.
18. A private health insurer must notify APRA, if the private health insurer anticipates that:
- (a) the private health insurer may be exposed to the occurrence of a non-viability event; or

- (b) the private health insurer may be subject to a non-viability event contained in non-viability requirements imposed by a home regulator or statute upon the private health insurer's foreign parent.

Attachment F – Mutual Equity Interests

1. To be classified as a mutual equity interest, an instrument must satisfy all of the criteria in this Attachment and Attachment A to this Prudential Standard, except that paragraphs 1(b), 1(c), 1(e), 1(g), and 1(h) of Attachment A are to be read as follows:
 - (b) the mutual equity interest represents a claim against the issuer in liquidation that is subordinate to all claims other than members' rights to residual assets;
 - (c) the holder of the mutual equity interest is entitled to a claim on the residual assets of the issuer after all senior claims, including the aggregate subscription price paid for all member shares, have been repaid in liquidation and;
 - (i) the holder's claim ranks equally and proportionately with all other mutual equity interests directly issued or created on conversion of Additional Tier 1 Capital or Tier 2 Capital instruments in accordance with Attachment E to this Prudential Standard; and
 - (ii) the holder's claim cannot exceed the principal amount of the mutual equity interest, that amount being measured as:
 - (A) if the mutual equity interest was issued directly, the paid-up amount of the mutual equity interest; or
 - (B) if the mutual equity interest was created on conversion of Additional Tier 1 Capital and Tier 2 Capital instruments, the nominal dollar value of the Additional Tier 1 Capital or Tier 2 Capital instrument prior to conversion into the mutual equity interest;
 - (e) distributions on the mutual equity interest are paid out of distributable items (including retained earnings) of the issuer, and there are no features that require the issuer to make payments in kind. The level of distributions must not be tied or linked to the credit standing of the issuer. Distributions on all mutual equity interests on issue cannot, in aggregate, exceed 50 per cent of the issuer's net profit after tax in the financial year to which the distributions relate.⁴⁷ All distributions on mutual equity interests must be treated as dividends for the purposes of HPS 110;
 - (g) distributions are paid only after all legal and contractual obligations have been met and payments on more senior capital instruments have been made;
 - (h) each mutual equity interest absorbs losses on a going concern basis proportionately, and *pari passu*, with all other mutual equity interests.

⁴⁷ 'Financial year' means a period of 12 consecutive months covered by one or more sets of publicly available operating results preceding the date of the proposed payments of distributions.

2. Issue documentation and marketing material for mutual equity interests must clearly and prominently state that:
 - (a) the mutual equity interest is neither covered by the Financial Claims Scheme nor guaranteed by the Australian Government;
 - (b) the principal amount of the mutual equity interest is perpetual and never repaid outside liquidation (other than discretionary repurchases subject to APRA's approval);
 - (c) the holder of the mutual equity interest may only be entitled to a claim on the issuing private health insurer's residual assets after more senior claims (including Additional Tier 1 Capital and Tier 2 Capital instruments) have been paid;
 - (d) neither the issuer nor the holder of the mutual equity interest is allowed to exercise any contractual rights of set-off in relation to the mutual equity interest; and
 - (e) the private health insurer has full discretion over the timing and amount of any distributions paid on the mutual equity interest, including not paying a distribution.
3. A private health insurer must obtain APRA's approval prior to issuing mutual equity interests, or Additional Tier 1 Capital or Tier 2 Capital instruments that convert to mutual equity interests in accordance with Attachment E to this Prudential Standard.
4. The principal amounts of all mutual equity interests on issue (determined in accordance with paragraph 1(c)(ii) of this Attachment) are eligible for inclusion in Common Equity Tier 1 Capital up to a maximum limit of 25 per cent of the regulated institution's Common Equity Tier 1 Capital before applying regulatory adjustments under paragraph 32(g) of this Prudential Standard.
5. The principal amounts of all mutual equity interests on issue (determined in accordance with paragraph 1(c)(ii) of this Attachment) are eligible for inclusion in Tier 1 Capital and the capital base.

Attachment G – Transitional arrangements

1. The transitional arrangements provide an adjustment to increase the capital base and is phased out over a two-year period. This adjustment will apply to the Common Equity Tier 1 Capital of the private health insurer, and the net assets of each fund.
2. For the transitional requirements to be effective, a private health insurer must notify APRA by 30 June 2023 and provide the data described in paragraphs 3(a), 3(b) and 3(c) by 30 September 2023 using a template that will be provided by APRA.

3. The Transitional Adjustment is:

$$\text{Transitional Adjustment} = \text{Min}((A - B) * X, A - C)$$

Where:

- (a) A is the accounting net assets reported to APRA as at 30 June 2023 in HRS 602
 - (b) B is the capital base calculated under this standard as at 30 June 2023
 - (c) C is the capital base calculated at the most recent reporting date under this standard (prior to the transitional adjustment being applied)
 - (d) X is a percentage which reduces over time, as set out in Table 1
4. The Transitional Adjustment only applies where it increases the capital base calculated in accordance with this Prudential Standard.

Table 1: Schedule for X in the Transitional Adjustment

Quarter commencing	X
1 July 2023	100.0%
1 October 2023	87.5%
1 January 2024	75.0%
1 April 2024	62.5%
1 July 2024	50.0%
1 October 2024	37.5%
1 January 2025	25.0%
1 April 2025	12.5%