



## Prudential Standard GPS 120

### Assets in Australia

#### Objective and key requirements of this Prudential Standard

This Prudential Standard specifies certain assets that are excluded from being treated as ‘assets in Australia’ by a general insurer for the purposes of section 28 of the *Insurance Act 1973*.

Section 28 requires all general insurers to maintain assets in Australia (excluding goodwill and other amounts excluded by this Prudential Standard) of a value that equals or exceeds the total amount of the general insurer’s liabilities in Australia other than its preauthorisation liabilities. This requirement is designed to ensure that the total value of assets held within the jurisdictional reach of APRA and the Australian courts is sufficient to meet a general insurer’s liabilities in Australia for the purposes of subsection 116(3) of the *Insurance Act 1973*.

*Prudential Standard GPS 110 Capital Adequacy* also requires that a Category C insurer operating in Australia as a branch maintains assets in Australia that exceed its liabilities in Australia by an amount that is greater than its Prudential Capital Requirement.

The assets that this Prudential Standard excludes from being treated as ‘assets in Australia’ are those that may not be treated by a court as falling within the definition of ‘assets in Australia’, or that APRA considers may have doubtful or no value to policyholders in Australia in the event of a general insurer becoming insolvent.

## Authority

1. This Prudential Standard is made under section 32 of the *Insurance Act 1973* (**the Act**) for the purposes of paragraph 28(a) of the Act.<sup>1</sup>

## Application

2. This Prudential Standard applies to all general insurers authorised under the Act (**insurers**).
3. Paragraphs 11 to 23 apply to all insurers other than **Category C insurers**. Paragraphs 25 to 37 apply only to Category C insurers. The remaining paragraphs apply to all insurers.
4. This Prudential Standard applies to insurers from 1 January 2013 (**effective date**).
5. Subsection 116A(1) of the Act deems certain reinsurance assets<sup>2</sup> to be assets in Australia. Subsection 116A(5) of the Act deems certain amounts owed by a person outside Australia to be assets in Australia. In the event of any inconsistency between section 116A of the Act and a provision of this Prudential Standard, section 116A of the Act prevails.

## Interpretation

6. Unless otherwise defined in this Prudential Standard, expressions in bold are defined in *Prudential Standard GPS 001 Definitions (GPS 001)*.
7. In this Prudential Standard:
  - (a) **Austraclear** means the Central Securities Depository service operated by Austraclear Ltd ACN 002 060 773.
  - (b) **Australian depository** means Austraclear and CHESS and any similar facility in Australia for the holding and trading of securities (whether debt or equity).
  - (c) **CHESS** means the service of that name operated by CHESS Depository Nominees Pty Limited ACN 071 346 506.
  - (d) **Clearstream** means the International Securities Depository Service of Clearstream International S.A., a company domiciled in Luxembourg.

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<sup>1</sup> The effect of this Prudential Standard is to exclude certain amounts, which might otherwise be treated as assets in Australia under the common law, from being counted as assets in Australia for the purposes of section 28 of the Act. This Prudential Standard does not, however, contain an exhaustive list of the circumstances in which assets will be excluded from being assets in Australia. In particular, the common law may exclude certain assets from being assets in Australia.

<sup>2</sup> For the purpose of this section of the Insurance Act, reinsurance assets comprise **reinsurance recoverables** as defined in GPS 001 and **expected reinsurance recoveries** as defined in GPS 001.

- (e) **custodian** means a body corporate that holds property for another person under a contractual arrangement, but excludes a sub-custodian or depository.
- (f) **depository** means an Australian depository or a foreign depository.
- (g) **Euroclear** means the International Central Securities Depository service of Euroclear Bank SA/NV, a company located in Belgium.
- (h) **external custody agreement** means any custody arrangement entered into by an insurer which covers assets being held on behalf of the insurer by a party other than the insurer. This includes both intra-group and fully external custody arrangements.
- (i) **foreign depository** means Euroclear, Clearstream and any similar facility outside Australia for the holding and trading of securities (whether debt or equity).
- (j) **interest in a Special Purpose Vehicle (SPV)** means:
  - (i) where the SPV is a company, a share or similar interest; and
  - (ii) where the SPV is a unit trust, a unit or similar interest.
- (k) **kangaroo bond** means a debt security issued for the purposes of the Australian market where the issuer does not reside in Australia.
- (l) **locally incorporated insurer** means an insurer that is incorporated in Australia or in a State or Territory of Australia, by or under a Commonwealth, State or Territory law. **Category A insurers, Category B insurers, Category D insurers and Category E insurers** are locally incorporated insurers.
- (m) **managed investment scheme** has the meaning as in the *Corporations Act 2001 (Corporations Act)*.
- (n) **responsible entity** has the same meaning as in the *Corporations Act*.
- (o) **SPV** means:
  - (i) a **subsidiary** of an insurer; or
  - (ii) a unit trust in which an insurer has investedwhere the predominant function of the subsidiary or trust is to hold an investment or investments (whether directly or indirectly) for the insurer (or for the insurer and one or more related bodies corporate of the insurer), but excludes:
  - (i) a managed investment scheme; and
  - (ii) a trust where the entire interest of the relevant insurer as beneficiary in the trust is a proprietary interest in a particular asset or particular

assets (rather than, for example, a mere interest in the due administration of the trust).<sup>3</sup>

(p) **sub-custodian** means:

- (i) a person to whom a custodian has contractually delegated the task of holding property for a customer of the custodian; and
- (ii) a person to whom a sub-custodian of the kind referred to in paragraph (i) has contractually delegated the task of holding such property, or to whom that task has been further contractually delegated

but does not include a depository.

8. APRA may determine, in writing, for the purposes of the definition of SPV, that the predominant function of a subsidiary or unit trust is to hold investments (whether directly or indirectly) for an insurer (or for the insurer and one or more related bodies corporate of the insurer), but a subsidiary or trust may fall within that definition even if APRA does not make such a determination.
9. Where this Prudential Standard refers to an asset (however described) being excluded from being an asset in Australia, an amount corresponding to the value of the asset is taken to be so excluded for the purposes of paragraph 28(a) of the Act.<sup>4</sup>

### **Locally incorporated insurers**

10. Paragraphs 11 to 23 apply to all insurers other than Category C insurers. However, Category C insurers must consider paragraphs 11 to 23 for the purposes of paragraph 30.

#### *Intangibles and certain other assets*

11. Assets that must be deducted from a locally incorporated insurer's capital base<sup>5</sup> under *Prudential Standard GPS 112 Capital Adequacy: Measurement of Capital (GPS 112)* are excluded from being assets in Australia.<sup>6</sup>

#### *Chattels and real property*

12. A chattel or real property of a locally incorporated insurer is excluded from being an asset in Australia if it is located outside Australia.

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<sup>3</sup> APRA has power under paragraph 8 to make a determination that the predominant function of a particular entity is to hold investments (whether directly or indirectly) for an insurer. Where the beneficial interest is of a proprietary nature, paragraph 22 will be relevant.

<sup>4</sup> APRA monitors compliance with section 28 of the Act through completed reporting forms submitted by insurers in accordance with reporting standards made under the *Financial Sector (Collection of Data) Act 2001*.

<sup>5</sup> This does not include assets that are, under GPS 112, deducted from a locally incorporated insurer's Tier 1 capital and included in its Tier 2 capital.

<sup>6</sup> As well as applying to locally incorporated insurers, this paragraph has application, through paragraph 34, to Category C insurers.

*Loans and amounts due (including debentures)*

13. Subject to subsection 116A(1) and subsection 116A(5) of the Act, an asset of a locally incorporated insurer is excluded from being an asset in Australia if:

*Debt assets, not being debt assets held through a depository*

- (a) the asset is a debt owed by another person (including, but not limited to, a debenture or a bond), not being an asset that is held through a depository, and:
- (i) the debt is payable outside Australia; or
  - (ii) the debt is not recoverable in an Australian court; or
  - (iii) the debtor does not reside in Australia; or
  - (iv) the debtor is a foreign government or foreign government authority; or
  - (v) the debt is not readily transferable in Australia; or

*Interests held on Australian depositories*

- (b) the asset is an interest held on an Australian depository, being an interest that derives from, or relates to, an underlying asset that is in the nature of a debt owed by another person, and:
- (i) the underlying asset would be excluded from being an asset in Australia under paragraph (a) if held directly by the locally incorporated insurer (rather than through a depository); and
  - (ii) APRA has not determined, in writing, to waive the exclusion of the asset or a class of assets of which the asset is a member; or

*Interests held on foreign depositories*

- (c) the asset is an interest held on a foreign depository, being an interest that derives from or relates to an asset in the nature of a debt owed by another person.
14. Paragraph 13 does not exclude an interest of a locally incorporated insurer in a kangaroo bond from being an asset in Australia if all the following conditions are complied with:
- (a) the underlying bond is legally owned by Austraclear Ltd or a nominee for Austraclear Ltd and is lodged in the Austraclear system; and
  - (b) the register recording legal ownership of the underlying bond is kept in Australia; and

- (c) the bond is created by a deed poll which is sealed, or deemed by its governing law to be sealed, and the deed poll is governed by Australian law and kept in Australia; and
- (d) the debt under the bond is expressed to be payable in Australia except where payment in Australia is prohibited by law (provided that if, at any time, such payment in Australia is prohibited by law, the debt under the bond shall be excluded from being an asset in Australia for so long as that payment is prohibited).

*Note: If a locally incorporated insurer holds an interest in a kangaroo bond through a custodian, the requirements of paragraphs 18 and 19 will also have to be complied with in order for the interest in a kangaroo bond not to be excluded from being an asset in Australia.*

### *Shares - general*

15. An asset of a locally incorporated insurer is excluded from being an asset in Australia if:

#### *Shares, not being shares held through a depository*

- (a) the asset is a share, not being a share that is held through a depository, and:
  - (i) the share is not readily transferable<sup>7</sup> in Australia; or
  - (ii) the share is not recorded on a register of members kept in Australia under section 169 of the Corporations Act; or

#### *Interests held on Australian depositories*

- (b) the asset is an interest held on an Australian depository, being an interest that derives from, or relates to, a share (**underlying share**), and:
  - (i) the underlying share would be excluded from being an asset in Australia under paragraph (a) if held directly by the locally incorporated insurer (rather than through a depository); and
  - (ii) APRA has not determined, in writing, to waive the exclusion of the asset or an asset of that kind; or

#### *Shares held on foreign depositories*

- (c) the asset is an interest held on a foreign depository, being an interest that derives from or relates to a share.

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<sup>7</sup> 'Readily transferable' does not imply that there must be a liquid market for the share. Rather, it refers to the ability to transfer the share to a willing purchaser free of any procedural or other impediment upon sale of the share.

*Interests in SPVs*<sup>8</sup>

16. If:
- (a) a locally incorporated insurer holds an interest in an SPV; and
  - (b) the SPV holds (whether directly or indirectly) an investment that would not be an asset in Australia if held directly by the locally incorporated insurer (either because it would be excluded under another provision of this Prudential Standard or because it would not otherwise be an asset in Australia within the meaning of paragraph 28(a) of the Act)

then an amount **A** is excluded from being an asset in Australia, where **A** is calculated as follows:

$$A = B/C \times D$$

where:

**B** means the **fair value** of any investments held by the SPV that would not be assets in Australia if held directly by the locally incorporated insurer;

**C** means the fair value of all the interests in the SPV; and

**D** means the fair value of the interests in the SPV held by the locally incorporated insurer.

17. For the purposes of paragraph 16, APRA may determine, in writing, that **B** has a specified value where APRA is satisfied that application of the formula would not fairly represent the underlying value to the locally incorporated insurer of the investment held by the SPV.<sup>9</sup>

*Assets held by custodians*

18. Paragraph 19 applies where a custodian holds:
- (a) the legal title to an asset or assets on bare trust; or
  - (b) an asset or assets under an agreement of a kind determined, in writing, by APRA for the purposes of this paragraph.
19. An asset held by a custodian for a locally incorporated insurer is excluded from being an asset in Australia if:

<sup>8</sup> Note that paragraph 21 may also apply in relation to an SPV if the SPV is a trust.

<sup>9</sup> An interest in an SPV that is a subsidiary of an insurer may also be excluded from being an asset in Australia because of the application of paragraph 15 (irrespective of whether the subsidiary is part of the insurer's Extended Licensed Entity (**ELE**) or holds foreign assets). Refer to *Prudential Standard GPS 114 Capital Adequacy: Investment Risk Capital Charge* for the definition of and requirements relating to ELEs. Further, an interest in an SPV that is a trust may be excluded from being an asset in Australia because of the application of paragraph 21 (irrespective of whether the trust is part of the insurer's ELE or holds foreign assets).

- (a) the custodian does not reside in Australia or the custodian's obligation to make payments or transfer assets to the locally incorporated insurer may be performed outside Australia; or
- (b) the locally incorporated insurer cannot enforce its rights against the custodian in an Australian court; or
- (c) the assets of the locally incorporated insurer are not kept distinct and separate from the custodian's own assets; or
- (d) the external custody agreement entered into between the locally incorporated insurer and the custodian is not subject to the laws of a State or Territory of Australia; or
- (e) the external custody agreement does not provide for liability on the part of the custodian arising from the acts or omissions on the part of the custodian, its agents or sub-custodians; or
- (f) the external custody agreement does not describe the process by which the locally incorporated insurer provides authorised instructions to the custodian; or
- (g) the external custody agreement does not describe the process by which the custodian provides periodic reports to the locally incorporated insurer; or
- (h) the external custody agreement does not provide for flexibility as to the rights and obligations of the parties to enable them to ensure compliance in the event of any changes to APRA's **prudential requirements** or other relevant legislation; or
- (i) the asset held by the custodian would not be an asset in Australia if it were held directly by the locally incorporated insurer (either because it would be excluded under another provision of this Prudential Standard or because it would not otherwise be an asset in Australia within the meaning of paragraph 28(a) of the Act); or
- (j) the asset held by the custodian is an interest in, or in relation to, an asset held by a sub-custodian, and the sub-custodian does not reside in Australia or the sub-custodian's obligation to make payments or transfer assets to the locally incorporated insurer may be performed outside Australia; or
- (k) the asset held by the custodian is an interest in, or in relation to, an asset held by a sub-custodian, and the asset held by the sub-custodian would not be an asset in Australia if it were held directly by the locally incorporated insurer (either because it would be excluded under another provision of this Prudential Standard or because it would not otherwise be an asset in Australia within the meaning of paragraph 28(a) of the Act); or
- (l) the custodian has the right to suspend or delay the transfer or realisation of the asset held by the custodian pending sale of any asset outside Australia.



Paragraphs (a) and (j) do not apply to an asset that is real property in Australia.<sup>10</sup>

*Interests in managed investment schemes*

20. An interest of a locally incorporated insurer in a managed investment scheme is excluded from being an asset in Australia if:
- (a) the responsible entity does not reside in Australia; or
  - (b) an agent holds the property of the scheme (**scheme property**) for the responsible entity and the agent does not reside in Australia; or
  - (c) under the scheme, the responsible entity or agent has the right to suspend or delay the redemption of the unit or investor's entitlement pending sale of any scheme property outside Australia; or
  - (d) any amounts payable to the locally incorporated insurer under the scheme are payable outside Australia; or
  - (e) the locally incorporated insurer cannot enforce its rights in relation to the managed investment scheme in an Australian court.

*Certain interests in trusts*

21. An equitable or a beneficial interest of a locally incorporated insurer in a trust (not being an interest arising where legal title is held by a custodian or an interest in a managed investment scheme) is excluded from being an asset in Australia if:
- (a) the trustee does not reside in Australia; or
  - (b) under the trust deed, the trustee has the right to suspend or delay the redemption of a unit or trust property pending sale of any of the trust's assets outside Australia; or
  - (c) any amounts payable to the locally incorporated insurer under the trust are payable outside Australia; or
  - (d) the locally incorporated insurer cannot enforce its rights against the trustee in an Australian court.<sup>11</sup>
22. An equitable or beneficial interest of a locally incorporated insurer in a trust (not being an interest arising where legal title is held by a custodian) is also excluded from being an asset in Australia if:

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<sup>10</sup> This exception only applies where the locally incorporated insurer has an equitable interest of a proprietary nature in the real property (rather than, for example, a mere equitable interest in the due administration of the trust, or a contractual right to be delivered property of an equivalent value).

<sup>11</sup> Paragraph 21 may apply in relation to an SPV if the SPV is a trust (as well as applying to certain other kinds of trusts).

- (a) the interest is a proprietary interest in a particular asset or particular assets (rather than merely an interest in the due administration of the trust); and
- (b) the asset or each asset would not be an asset in Australia if it were held directly by the locally incorporated insurer (either because it would be excluded under another provision of this Prudential Standard or because it would not otherwise be an asset in Australia within the meaning of paragraph 28(a) of the Act).<sup>12</sup>

#### *Other equitable interests*

23. An equitable interest of a locally incorporated insurer in an asset (not being an equitable interest in property held under a managed investment scheme, or property held by a custodian, or property otherwise held on trust) is excluded from being an asset in Australia if:
- (a) the legal owner of the asset (**legal owner**) does not reside in Australia; or
  - (b) any amounts payable by the legal owner to the locally incorporated insurer in respect of the arrangement are payable outside Australia; or
  - (c) the asset would not be an asset in Australia if it were held directly by the locally incorporated insurer (either because it would be excluded under another provision of this Prudential Standard or because it would not otherwise be an asset in Australia within the meaning of paragraph 28(a) of the Act); or
  - (d) the locally incorporated insurer cannot enforce its rights in relation to the asset in an Australian court.

#### **Category C insurers**

24. Paragraphs 25 to 37 apply to Category C insurers only.

#### *Assets must be held by Category C insurer's custodian or agent in Australia*

25. Subject to paragraph 27, an asset of a Category C insurer is excluded from being an asset in Australia unless it is held for the Category C insurer by either:
- (a) a custodian where:
    - (i) the legal title is held a way specified in paragraph 18(a) or (b); and

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<sup>12</sup> Paragraph 22 will apply where, in a practical sense, the insurer might be said to beneficially own the trust property; e.g. where the insurer can request that the trustee transfer the full legal and beneficial interest in the property to the insurer, either immediately or at a specified date. This paragraph will not apply where, for example, the insurer's rights are merely to receive investment returns, or to request the redemption of units in the trust for cash. Paragraph 22 generally will not apply to an SPV that is a unit trust.

- (ii) the conditions in paragraphs 19(a) to (l) are complied with<sup>13</sup>; and
  - (iii) under the external custody agreement, only the agent in Australia of the Category C insurer may give directions (either directly or via a delegated authority to another person as provided for in paragraph 29) to the custodian permitting or requiring any disposal of assets;<sup>14</sup>  
or
- (b) the Category C insurer's agent in Australia (on trust for the Category C insurer).
26. Nothing in paragraph 25(a)(iii) precludes a Category C insurer from requiring a co-signatory, who need not reside in Australia, to also authorise a direction to the custodian permitting or requiring disposal of an asset. However, where there is a co-signatory, the requirement in paragraph 25(a)(iii) will be taken to be met only if:
- (a) the agent in Australia maintains control of the assets in Australia by being the only entity with authority to deal with the custodian directly; and
  - (b) the requirement for a co-signatory is an arrangement agreed upon between the Category C insurer and the agent in Australia; and
  - (c) the external custody agreement recognises only the authority of the agent in Australia to give directions to the custodian; and
  - (d) the agent in Australia does not delegate to the co-signatory its authority to give directions to the custodian; and
  - (e) the co-signatory:
    - (i) is appointed by the Category C insurer;
    - (ii) is not a disqualified person as defined in section 25 of the Act; and
    - (iii) meets the fitness and propriety criteria for responsible persons under *Prudential Standard CPS 520 Fit and Proper (CPS 520)*.
27. Paragraph 25 does not apply to the following assets of a Category C insurer:
- a) real property in Australia;
  - b) premium receivables due to the Category C insurer provided that any premium receivable outstanding for more than six months from the date when the premium receivable became due and payable is excluded from being an asset in Australia; and

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<sup>13</sup> For these purposes, the conditions in paragraphs 19(a) to (l) are to be treated as having been complied with if they would not operate to exclude the asset from being an asset in Australia if the Category C insurer were a locally incorporated insurer.

<sup>14</sup> The trading of assets in Australia conducted within a custodian arrangement is not considered to be a disposal of the assets under this paragraph as long as the assets are not traded for assets that are not assets in Australia. Transfer of assets in Australia outside of a custodian arrangement is considered to be a disposal of assets under this paragraph.

- c) cash held in the Category C insurer's bank account in Australia provided that any withdrawal from the bank account requires authorisation by the Category C insurer's agent in Australia.
28. For the purposes of paragraph 27(c), **bank account in Australia** means a bank account maintained with an **authorised deposit-taking institution**<sup>15</sup> in Australia under the terms of which deposits are:
- (a) at call; or
- (b) term deposits of no more than six months duration.
29. For the purposes of paragraphs 25 to 28 and 30 to 37, an agent in Australia may delegate authority to carry out acts for a Category C insurer (other than holding property on trust for a Category C insurer under paragraph 25(b)) to one or more persons (**delegates**) provided that every delegate:
- a) is an individual who resides in Australia;
- b) is not a disqualified person as defined in section 25 of the Act; and
- c) meets the fitness and propriety criteria for responsible persons under CPS 520.<sup>16</sup>

Any reference in this Prudential Standard to authorisation by an agent in Australia includes authorisation by a delegate.

### *Repatriation of assets*

30. Any declared repatriation of net assets in Australia by a Category C insurer out of the current year profits of its branch in Australia is excluded from being an asset in Australia.<sup>17</sup> For the purposes of this paragraph, Category C insurers must also consider paragraphs 11 to 23.

### *Asset revaluation reserves*

31. Amounts referred to in paragraph (a) or (b) are excluded from being assets in Australia:
- (a) 55 per cent of pre-tax revaluation reserves of each of the following:<sup>18</sup>
- (i) property not held at fair value; and

<sup>15</sup> For the avoidance of doubt, this refers to a deposit-taking institution authorised by APRA under the *Banking Act 1959* (**Banking Act**) and includes foreign ADIs as defined in the Banking Act.

<sup>16</sup> This is a requirement under the Act where the agent in Australia is a corporate agent and the delegate is a director or senior manager of the corporate agent.

<sup>17</sup> The treatment of declared repatriations is akin to the treatment of declared dividends out of the current year profits of a locally incorporated insurer under GPS 112.

<sup>18</sup> This amount includes cumulative unrealised gains or losses on effective cash flow hedges. Where a revaluation is calculated net of hedges, the amount of hedges concerned must be excluded from assets in Australia, that is, the gains or losses on hedges must be deducted from or added back to assets in Australia.

- (ii) investments of the Category C insurer in subsidiaries not held at fair value, other than subsidiaries that APRA deems part of an Extended Licensed Entity (**ELE**) (refer to *Prudential Standard GPS 114 Capital Adequacy: Asset Risk Charge*)

(the amount recognised must be net of any fair value gains and losses and any gains or losses on hedges offsetting revaluations included in reserves); and

- (b) 55 per cent of the post-acquisition reserves of the Category C insurer's associates,<sup>19</sup> which includes, under equity accounting, the Category C insurer's share of undistributed profits, plus any share of asset revaluations in associates or any other revaluation of investments in associates (the amount recognised must be net of fair value gains and losses and any gains or losses on hedges offsetting revaluations of investments in associates included in reserves).<sup>20</sup>

*Assets held through a corporate agent*

32. An asset held under an agreement between a Category C insurer and a **corporate agent** is excluded from being an asset in Australia if the corporate agent engages in any business or commercial activity other than activities in its capacity as agent in Australia, unless that activity:
- (a) is necessary for, or reasonably incidental to, the corporate agent's activities as agent in Australia; or
  - (b) has been approved by APRA in writing.
33. APRA may give approval under paragraph 32(b) if satisfied that the corporate agent's conduct of that business or activity will not prejudice the efficient and proper discharge of the corporate agent's duties as an agent in Australia.

*Assets must be of a kind that would not be excluded if held by a locally incorporated insurer*

34. An asset held:
- (a) for a Category C insurer in accordance with paragraph 25; or
  - (b) directly by the Category C insurer in accordance with paragraph 27

is excluded from being an asset in Australia if it would not be an asset in Australia if it were held by or for a locally incorporated insurer (either because it would be excluded under a provision of this Prudential Standard or because it

<sup>19</sup> 'Associates' is a reference to associates as defined in the **Australian Accounting Standards** and is to be read as also applying to joint ventures.

<sup>20</sup> This amount includes cumulative unrealised gains or losses on effective cash flow hedges. Where a revaluation is calculated net of hedges, the amount of hedges concerned must be excluded from assets in Australia, that is, the gains or losses on hedges must be deducted from or added back to assets in Australia.

would not otherwise be an asset in Australia within the meaning of paragraph 28(a) of the Act.<sup>21</sup>

35. To facilitate the operation of paragraph 34, APRA may, where appropriate, exercise any power in the provisions of this Prudential Standard relating to locally incorporated insurers, as if an asset or assets held by a custodian or agent in Australia for a Category C insurer were instead held by or for a locally incorporated insurer.

#### *Prudential Capital Requirement for Category C insurers*

36. As noted in *Prudential Standard GPS 110 Capital Adequacy*, Category C insurers do not typically have capital instruments of the type specified in GPS 112. Category C insurers are nevertheless required to meet a variant of the Prudential Capital Requirement (**PCR**). Specifically, Category C insurers are required to maintain assets in Australia, which exceed their liabilities in Australia (adjusted for any surplus or deficit of technical provisions relative to those required by *Prudential Standard GPS 320 Actuarial and Related Matters*) by an amount that is greater than their PCR.
37. An asset will not be counted as an asset in Australia for the purposes of paragraph 36 if this Prudential Standard excludes it from being an asset in Australia for the purposes of paragraph 28(a) of the Act, or it is not otherwise an asset in Australia within the meaning of paragraph 28(a) of the Act.

#### **Provisions applying to all insurers**

##### *Other cases of foreign assets held through intermediate entities*

38. Where:
- (a) but for this paragraph, an asset would be treated as an asset in Australia of an insurer; and
  - (b) that asset relates to an interest (**underlying interest**) which is held through one or more interposed entities (including, without limitation, trusts or companies, or a combination thereof); and
  - (c) the underlying interest would not be an asset in Australia (either because it would be excluded under another provision of this Prudential Standard or because it would not otherwise be an asset in Australia within the meaning of paragraph 28(a) of the Act) if the underlying interest were held directly by the insurer (or, in the case of a Category C insurer, if held directly by the Category C insurer's custodian or agent in Australia)

then APRA may, having regard to the risk that the proceeds of the underlying interest may not be available in a winding up of the insurer in Australia,

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<sup>21</sup> This means that essentially Category C insurers are in the same position as locally incorporated insurers except they must also comply with the requirements of this Prudential Standard that apply to Category C insurers.

determine, in writing, that the amount is excluded from being an asset in Australia.

**Adjustments and exclusions**

39. APRA may, by notice in writing to an insurer, adjust or exclude a specific prudential requirement in this Prudential Standard in relation to that insurer.

**Determinations made under previous prudential standards**

40. An exercise of APRA's discretion (such as an approval, waiver or direction) under a previous version of this Prudential Standard continues to have effect as though exercised pursuant to a corresponding power (if any) exercisable by APRA under this Prudential Standard. For the purposes of this paragraph, 'a previous version of this Prudential Standard' includes:
- (a) *Prudential Standard GPS 120 Assets in Australia (GPS 120)* made on 18 June 2010;
  - (b) GPS 120 made on 23 June 2008; and
  - (c) GPS 120 made on 25 September 2006.