

# Financial Sector (Shareholdings) Rules 2019 (Draft)

## *Financial Sector (Shareholdings) Act 1998*

### Introduction

1. These Rules are made under subsection 45A(1) of the *Financial Sector (Shareholdings) Act 1998* (the Act). They apply to applications made under section 13 of the Act for approval to be granted on the basis of paragraph 14(1)(b) of the Act.
2. For the purposes of subsection 14A(2) of the Act, these Rules prescribe matters that must be considered in determining whether a person is a fit and proper person for the purposes of paragraphs 14(1)(a) and 18(1)(d) of the Act. However, these Rules do not limit the matters that may be considered.
3. For the purpose of subsection 14A(5) of the Act, these Rules prescribe the meaning of *total resident assets* in relation to a financial sector company.
4. For the purpose of paragraph 16A(5)(b) of the Act, these Rules prescribe the information that must be contained in the yearly report of prudential information given by the holder of an approval to APRA under subsection 16A(4) of the Act.

*Note*      **Matters to consider before lodging a formal application**

Applicants are encouraged to discuss the proposed shareholding with APRA before lodging a formal application. APRA may make available on its website a form to assist applicants in providing all necessary information.

Applicants should also consider the need to raise their application with, or provide information in relation to the proposed stake to, other agencies, such as the Australian Taxation Office, the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission and the Foreign Investment Review Board.

### Interpretation

5. In these Rules:

*assets threshold* has the meaning given in section 3 of the Act.

*associate* has the meaning given in clause 2 of Schedule 1 to the Act.

*ADI* has the meaning given in section 5 of the *Banking Act 1959*.

*APRA* means the Australian Prudential Regulation Authority.

*building society* means a locally incorporated ADI that assumes or uses the expression 'building society' in relation to its banking business.

*credit union* means a locally incorporated ADI that assumes or uses the expression 'credit union' in relation to its banking business.

*direct control interest* has the meaning given in clause 2 of Schedule 1 to the Act.

*financial sector company* has the meaning given in section 3 of the Act.

*general insurer* has the meaning given in section 11 of the *Insurance Act 1973*.

*holder of an approval* means a person who has been granted approval under paragraph 14(1)(b) of the Act to hold a stake of more than 20% in a financial sector company.

*life company* has the meaning given in the Dictionary to the *Life Insurance Act 1995*.

*PPF provider or purchased payment facility provider* refers to an ADI with authority to provide purchased payment facilities.

*purchased payment facility* has the meaning given by section 7 of the *Payment Systems (Regulation) Act 1998*.

*Reporting Standard ARS 320.0* means Reporting Standard ARS 320.0 Statement of Financial Position (Domestic Books).

*Reporting Standard ARS 323.0* means Reporting Standard ARS 323.0 Statement of Financial Position (Licensed ADI).

*Reporting Standard GRS 300.0* means Reporting Standard GRS 300.0 Statement of Financial Position.

*Reporting Standard LRS 300.0* means Reporting Standard LRS 300.0 Statement of Financial Position.

*Rules* means these *Financial Sector (Shareholdings) Rules 2019*.

*relevant licensed company* has the meaning given in section 3 of the Act.

*Note:* Section 3 of the Act provides that *relevant licensed company*, in relation to an approval under paragraph 14(1)(b), means the company to which subsection 14A(3) or (4) applied in granting the approval.

*stake* has the meaning given in clause 2 of Schedule 1 to the Act.

6. In these Rules, unless the contrary intention appears, a reference to an Act or Reporting Standard is a reference to the Act or Reporting Standard as in force from time to time.

**Matters that must be considered in determining whether a person is fit and proper (subsection 14A(2) of the Act)**

7. The following matters are prescribed, under subsection 14A(2) of the Act, as matters that must be considered in determining whether a person is a fit and proper person for the purposes of paragraphs 14A(1)(a) and 18(1)(d) of the Act:
  - (a) the honesty, integrity and reputation of the person;
  - (b) the competence and capability of the person, having regard to the degree of control or influence that the person has over the financial sector company;

- (c) the financial soundness of the person;
- (d) whether the person has any conflict of interest in regards to the proposed shareholding that is likely to give rise to a material risk;
- (e) whether there are reasonable grounds for suspecting the person has committed, or is at risk of committing, a financial crime, including money laundering or terrorism financing;
- (f) whether:
  - (i) the financial sector company's ability and willingness to comply with its prudential requirements; and
  - (ii) APRA's ability to effectively supervise the financial sector company, are likely to be negatively impacted if approval is granted to the person under paragraph 14(1)(b) of the Act;
- (g) if the person is a company, whether each of its directors and chief executive officer, or equivalent persons, would be a fit and proper person to hold a stake of more than 20% in the financial sector company; and
- (h) the potential for the person to be influenced by another person that is not a fit and proper person to hold a stake of more than 20% in the financial sector company.

**Meaning of total resident assets (subsection 14A(5) of the Act)**

- 8. In relation to a financial sector company that is an ADI that is a credit union, building society or provider of purchased payment facilities, total resident assets means the value of the company's total assets, worked out in accordance with the method for calculating total assets under Reporting Standard ARS 323.0.
- 9. In relation to a financial sector company that is an ADI to which Rule 8 does not apply, total resident assets means the value of the company's total assets, worked out in accordance with the method for calculating total assets under Reporting Standard ARS 320.0.
- 10. In relation to a financial sector company that is a general insurer, total resident assets means the value of the company's total assets, worked out in accordance with the method for calculating total assets under Reporting Standard GRS 300.0.
- 11. In relation to a financial sector company that is a life company, total resident assets means the value of the company's total assets, worked out in accordance with the method for calculating total assets under Reporting Standard LRS 300.0.

**Information to be contained in yearly report of prudential information (paragraph 16A(5)(b) of the Act)**

- 12. For the purposes of paragraph 16A(5)(b) of the Act, the following information is prescribed:

- (a) any information known to the holder of the approval that reveals that the total resident assets of the relevant licensed company has or had exceeded, or is likely to exceed in the current financial year, the assets threshold;
  - (b) the amount of the direct control interest and the stake held by the holder of the approval in the relevant licensed company as at the end of the most recent expired financial year;
  - (c) if the holder of the approval is a company, any changes to its directors, chief executive officer, or equivalent persons;
  - (d) subject to Rule 13, an attestation by the holder of the approval of the following in relation to the financial year just expired:
    - (i) there has been no material change to the fitness and propriety of the holder, including but not limited to matters prescribed under Rule 7;
    - (ii) there has been no significant deterioration in the financial position of the holder; and
    - (iii) the holder is not, and has not been the subject of any legal action or investigation which might put into question the holder's fitness and propriety; and
    - (iv) if the holder is a company, that there are no concerns about, and no material change to, the fitness and propriety of any of its directors and chief executive officer, or equivalent persons, including but not limited to matters prescribed under Rule 7.
13. If the holder of the approval is a company, the attestation under Rule 12 must be made by the chief executive officer, or an equivalent person, of the holder.