



INSTRUCTION GUIDE

Approval to own or control an RSE licensee

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Introduction

This Instruction Guide provides general information on making an application for approval to hold a stake of more than 15 percent in an RSE licensee under *the Superannuation Industry (Supervision) Act 1993* (the SIS Act) using the *Application Form – Approval to own or control an RSE licensee (Form RSELCC)*. It does not constitute legal advice.

For further information, visit APRA website at www.apra.gov.au or contact 1300 55 88 49 or by email at RSELCCForm@apra.gov.au.

Why apply to APRA?

The SIS Act prohibits a person from holding a controlling stake in an RSE licensee unless approval is provided by APRA. An applicant must apply to APRA using *Form RSELCC*.

What is the application process?

APRA's application process, as with its approach to supervision, is consultative. Each application is assigned a responsible supervisor who is the main contact for all matters related to the application.

Form RSELCC is available on the APRA website. The Applicant will be able to submit a draft application by providing either hard copy or electronic version to enable consultation with APRA prior to making an application for the purposes of s. 29HA of the SIS Act. While there is no legal obligation for APRA to comment on draft applications, APRA will endeavour to provide comments as soon as practicable. The Applicant will have the ability to amend the draft application at any time up until they lodge Form RSELCC in its final version.

Applicants should be aware that APRA may request any additional information it considers necessary to assess the application under s. 29HA of the SIS Act post lodgement of Form RSELCC.

Applicants are strongly encouraged to submit a draft application and to discuss their proposal with APRA before making an application for the purposes of s. 29HA of the SIS Act.

Applications will be processed within the period permitted under s. 29HC of the SIS Act.

Applicants will be notified in writing of APRA's decision.

Should APRA be inclined to decline an application, it will advise the Applicant of its preliminary view and the reasons for it. The Applicant will have the opportunity to provide reasons why the proposed decision should be reconsidered and this submission will be taken into account in APRA's final decision.

Is there a prescribed fee?

There is no application fee for Applicants seeking to apply for approval to own or control an RSE licensee.

Penalties for false information

Applicants should note that giving false or misleading information is a serious offence (see s. 136.1, s. 137.1 and s. 137.2 of the Criminal Code Act 1995). Where information is disclosed to APRA as part of this application, APRA may in turn disclose that information in any of the circumstances permitted by s. 56 of the *Australian Prudential Regulation Authority Act 1998*.

Guidance on completing the approval to own or control an RSE licensee form

Guidance is provided on selected sections of Form RSELCC together with relevant commentary on selected items within these sections.

Where the Applicant is a body corporate, lodgement of Form RSELCC and each document required by the form must be approved by the Board of the Applicant prior to final lodgement with APRA.

Part A – General information

All questions in the FORM RSELCC must be completed where applicable

Part A of the Form RSELCC requests general information about the Applicant including:

- key contact details for the Applicant; and
- details of the transaction.

Application details

The Applicant must select whether the application is to be treated as an application for the purposes of s. 29HA of the SIS Act or whether it is intended only as a draft application for the purposes of commencing preliminary discussions with APRA on the controlling stake transaction.

A.1, A.2, A.3 and A.4 – Details of the Applicant

Contact persons

The contact persons must be available and have appropriate knowledge of the application to assist with any queries that APRA may have.

Historical ASIC company search (where applicable)

Attach a copy of a historical ASIC company search result for the Applicant. The search result must not be more than seven days old when the Applicant lodges their application.

A.5 – Regulated by foreign regulator/s

The Applicant is to provide details on any foreign regulator/s they are regulated by.

A.6, A.7 and A.8 – Details of current and proposed controlling stake

The Applicant is to provide details on whether they currently hold an existing stake in the RSE licensee subject to the application and proposed controlling stake.

A.9– Applicant background

A9.1 Indicate whether the Applicant:

- currently holds a controlling stake in any RSE licensee; and/or
- has previously held a controlling stake in any RSE licensee (including the RSE licensee which is the subject of this application),

and if so, provide details. If the Applicant is a body corporate, include any controlling stakes currently or previously held by directors of the Applicant. Include any controlling stakes held prior to the commencement of Division 8 of Part 2A of the SIS Act.

A9.2 Indicate whether the Applicant has any current or previous involvement in an RSE licensee. Involvement could include, but is not limited to, providing a service to an RSE licensee, appointment of individuals to responsible person positions within an RSE licensee or unsuccessful attempts to acquire a stake in an RSE licensee.

A.10 – Change of RSE licensee details - Director

Where the proposal will result in a change of one or more directors on the Board of the RSE licensee at the time of acquiring the controlling stake, the Applicant must provide details of the change, including whether any current directors will be replaced.

Where the proposal includes a change in a director of the Board, shares are non-beneficially held by the director and there is no change in the beneficial owner of the shares, the Applicant does not need to provide the Attachments for sections relating to Nationality, Australian Residency, Directorships and shareholdings, Financial Benefit, Fit and Proper Assessment, Disqualified person status and Curriculum Vitae.

If the shares in the RSE licensee are beneficially held by the Director, all Attachments are to be provided.

Position of Director

Indicate what position the director will occupy from the options below:

Executive Director	A director who is a member of the RSE licensee's management. Refer to SPS 510
Non-Executive director	A director who is not a member of RSE licensee's management. Refer to SPS 510
Independent director	An independent director within the meaning given in s. 10 of the SIS Act. Refer to sections 10 and 89 of the SIS Act.
Employer representation	A director nominated to represent the interests of an employer(s). Refer to sections 10 and 89 of the SIS Act.

Executive Director	A director who is a member of the RSE licensee's management. Refer to SPS 510
Member representative	A director nominated to represent the interests of members. Refer to sections 10 and 89 of the SIS Act.

Chairperson of the Board

SPS 510 requires that the chairperson of the Board must be a director of the RSE licensee. Indicate whether the intention is that proposed director will also be the Chairperson of the Board of the RSE licensee.

Nationality

Attach documentation which demonstrates the nationality of the director according to their birth certificate and/or current passport.

Australian residency

SPS 510 requires that a majority of directors of an RSE licensee must be ordinarily resident in Australia and all senior management of an RSE licensee to be ordinarily resident in Australia. Attach documentation which demonstrates the residency of each proposed new director. Such items may include a Certificate of Evidence of Resident Status from the Department of Immigration & Citizenship or a copy of a driver's licence.

Directorships and shareholdings

Indicate whether the proposed director holds any directorships and/or shareholdings in any other corporation and if so, provide details.

Financial benefit

Indicate whether the proposed director receives a financial benefit from the Applicant or any other source that may be deemed relevant under the requirements of SPS 521 and if so, provide details.

Fit and proper assessment

SPS 520 requires an RSE licensee's Fit and Proper Policy must require a fit and proper assessment to be completed before a person becomes the holder of a responsible person position. Attach a fit and proper assessment for the proposed director.

A fit and proper assessment should include details of any civil or criminal proceedings or enforcement action (in Australia and/or overseas) against the proposed responsible person in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the proposed responsible person.

This would also include any investigations by regulatory agencies, or where consent by the proposed responsible person to an order or direction or provision of an undertaking not to engage in certain conduct was given, and any other matters which reflect adversely on the person's competence, diligence, judgment, honesty or integrity.

Conduct and events that took place overseas may also be relevant to the assessment.

Disqualified person status

An Applicant must attach relevant documentation, such as a Federal Police Check (please select the APRA code on the police check form) and Bankruptcy check to demonstrate that each proposed director is not disqualified within the meaning of s. 120 of the SIS Act.

A.11 – Change of RSE licensee details – Service Providers

Where the proposal includes a change to the service providers to the RSE licensee at the time of acquiring the controlling stake, please specify details of these, including the type of service being provided and whether they will be an 'associate' of the RSE licensee (within the meaning of s. 12 of the SIS Act) if the application for the proposed controlling stake is approved..

A.12 – Other business

Complete this section if the Applicant or any companies related to the Applicant is involved in a company / business other than relating to the proposed controlling stake in the RSE licensee.

Description of business

Provide a description of the type of business, including information regarding the organisation ownership and structure. The information provided should demonstrate the nature, size and complexity of the business.

Applicant's association with business

Provide a description of the nature of the Applicant's association with the business. Include information regarding any contractual arrangements for services or other matters the Applicant may have with the business. Specify any shareholding in the business or remuneration received from the business.

Part B – Supporting Documentation

Part B requires additional documents to support the application and to demonstrate that, in the event APRA approves the change of control, there is no reason that the RSE licensee may be unable to satisfy one or more of the RSE licensee's obligations in the covenants set out in ss. 52 to 53 (or any prescribed under s. 54A).

It is recognised that the type of information provided by the Applicant for some items will vary depending on the Applicant's particular circumstances.

B.1 – Proposal

B1.1 Controlling Stake Proposal

Attach a description of the proposal including but not limited to:

- the terms of the arrangement;

- the reasons for seeking approval of a controlling stake in the RSE licensee, including a diagram of the proposed corporate structure of the Applicant including the RSE licensee if the controlling stake is approved;
- details of any changes to the roles and responsibilities of responsible persons of the RSE licensee;
- details of how the shares are to be held (i.e. beneficially or non-beneficially);
- details of any changes to the financial resources of the RSE licensee (including where the financial resources held to meet the ORFR target amount are held directly by the RSE licensee as operational risk trustee capital); and
- any other significant changes proposed to be implemented in the event the controlling stake is approved.

B1.2 Business Plan (if applicable)

Attach a copy of the Applicant's business plan (if applicable) and a description of how the plan relates to the proposed operation and control of the RSE licensee. At a minimum, the business plan would:

- demonstrate the adequacy of the Applicant's resources (financial, technical, human) to support the RSE licensee meeting its objectives under its business plan and any new strategic direction of the RSE licensee;
- specify any contemplated changes to the RSE licensee or its offerings; and
- outline the Applicant's projected financial performance for the next 3 – 5 years.

In limited circumstances, an Applicant may not be required to provide a business plan. The Applicant should contact their responsible supervisor if the nature of the proposal suggests a business plan may not be warranted.

B1.3 Shareholder Agreement (if applicable)

Attach a copy of the proposed shareholder agreement, and any other relevant document concerning the change in shareholding proposal, that clearly identifies all parties involved in the proposal.

B.2 - Applicant documentation

B2.1 Risk Assessment

The Applicant must provide a risk assessment outlining the impact, if any, that the controlling stake proposal is expected to have on the RSE licensee and its RSE(s), including the RSE licensee's ability to satisfy the obligations in the covenants set out in ss. 52 to 53 (or any prescribed under s. 54A). The assessment should include (but not be limited to) consideration of the impact of the controlling stake proposal on members' best interests and member outcomes, fees, adequacy of resources, operational and IT risks.

Where the proposal involves a change of director(s) of the Board, the director holds shares in the RSE licensee non-beneficially and there is no change in the beneficial owner' of the shares, the risk assessment needs to confirm that the RSE licensee has undertaken a fit and proper assessment, the proposed director(s) has skills that allow them to make an effective contribution to the Board and the proposed appointment does not adversely affect the RSE licensee's ability to satisfy the obligations in the covenants. .

B2.2 Applicant's constitution (if applicable)

Attach a copy of the Applicant's constitution.

B2.3 Governing rules (if applicable)

If the proposal includes a change to the governing rules for any RSE under trusteeship of the RSE licensee, attach a copy of the proposed changes.

Part C – Attestations

The Attestation in Part C must be completed by the Applicant, or if the Applicant is a body corporate, by at least two directors.

If the Applicant has indicated in Part A that the documentation is a draft application, the attestation in Part C is not required to be completed.

Glossary

ABN	Australian Business Number
Applicant	The person applying for the controlling stake in the RSE Licensee.
APRA	Australian Prudential Regulation Authority
proposal	For the purposes of this application, the proposal is the document articulating the details of the proposed change of control or ownership of the RSE licensee which results in a controlling stake
ASIC	Australian Securities and Investments Commission
beneficial owner	For the purposes of this application, a 'beneficial owner' receives the benefit of shares held non-beneficially (e.g. a nominating member or employer association / organisation, or an employer-sponsor)
controlling stake	As defined in subsection 10(1) of the SIS Act
FSSA Act	<i>Financial Sector (Shareholdings) Act 1998</i>
ORFR	<i>Operational Risk Financial Requirement as defined in SPS 114.</i>
responsible person	As defined in SPS 520.
RSE	Registrable superannuation entity as defined under section 10 of the SIS Act
RSE licence	Registrable superannuation entity licence granted under section 29D of the SIS Act
RSE licensee	A constitutional corporation or body corporate that holds an RSE licence granted under section 29D of the SIS Act and who is the subject of the proposal
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SPS 114	<i>Prudential Standard SPS 114 Operational Risk Financial Requirement.</i>
SPS 510	<i>Prudential Standard SPS 510 Governance</i>
SPS 520	<i>Prudential Standard SPS 520 Fit and Proper</i>
SPS 521	<i>Prudential Standard SPS 521 Conflicts of Interest</i>

ABN	Australian Business Number
stake	As defined in subsection 10(1) of the SIS Act
superannuation entity	As defined in subsection 10(1) of the SIS Act



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