

EXPOSURE DRAFT

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Inserts for
**Financial Sector (Shareholdings)
Amendment (Relaxing Ownership
Restrictions) Bill 2018**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1	The first 1 January, 1 April, 1 July or 1 October to occur after the end of the period of 2 months beginning on the day this Act receives the Royal Assent.	

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Schedule 1—Amendments

Part 1—Amendments

Financial Sector (Shareholdings) Act 1998

1 Section 3

Insert:

APRA means the Australian Prudential Regulation Authority.

assets threshold has the meaning given by subsections 14A(6) and (7).

civil penalty provision has the same meaning as in the Regulatory Powers Act.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

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.

rules means rules made under subsection 45A(1).

total resident assets has the meaning given by subsection 14A(5).

2 Section 8

Omit:

The allowed percentage is 15% or a higher percentage approved by the Treasurer for the person on national interest grounds.

A person who holds a stake of no more than 15% of a financial sector company may be declared by the Treasurer to have practical control of the company. The person must then take steps to end that control.

substitute:

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1 The allowed percentage is 20% or a higher percentage approved by
2 the Treasurer for the person either:

- 3 (a) on national interest grounds; or
4 (b) on the basis that the person is a fit and proper person and
5 the company concerned is new or recently established,
6 with assets below a certain threshold amount.

7 A person who holds a stake of no more than 20% of a financial
8 sector company may be declared by the Treasurer to have practical
9 control of the company. The person must then take steps to end
10 that control.

11 **3 Division 2 of Part 2 (heading)**

12 Omit “15%”, substitute “20%”.

13 **4 Paragraph 10(a)**

14 Omit “15%”, substitute “20%”.

15 **5 Division 3 of Part 2 (heading)**

16 Omit “15%”, substitute “20%”.

17 **6 Section 13 (heading)**

18 Omit “15%”, substitute “20%”.

19 **7 Subsection 13(1)**

20 Omit “15%”, substitute “20%”.

21 **8 After subsection 13(1)**

22 Insert:

- 23 (1A) The application may be in relation to a company that is not a
24 financial sector company at the time the application is made.

25 **9 Before paragraph 13(2)(a)**

26 Insert:

- 27 (aa) specify whether the applicant is seeking for the approval to
28 be granted on the basis of either paragraph 14(1)(a) or (b);
29 and

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10 Paragraph 13(2)(a)

Omit “financial sector company”, substitute “company concerned”.

11 Paragraph 13(2)(d)

After “prescribed fee”, insert “(if any)”.

12 Subsection 14(1)

Repeal the subsection, substitute:

(1) The Treasurer may grant the application if:

(a) the applicant satisfies the Treasurer that it is in the national interest to approve the applicant holding a stake in the company of more than 20%; or

(b) the applicant satisfies the Treasurer that the criteria in subsection 14A(1) are met in relation to the applicant and the company.

13 Paragraph 14(2)(c)

Before “either”, insert “if the application is granted under paragraph (1)(a)—”.

14 At the end of subsection 14(2)

Add:

; and (d) if the application is granted under paragraph (1)(b)—specify that the approval remains in force for the period worked out under section 15A.

15 At the end of subsection 14(4)

Add:

; and (c) in the case of an approval granted under paragraph (1)(b), if the company concerned is not the relevant licensed company for the approval—given to the relevant licensed company for the approval.

16 After section 14

Insert:

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14A Criteria for applications relating to new or recently established financial sector companies

- (1) For the purposes of paragraph 14(1)(b), the criteria are:
- (a) the applicant is a fit and proper person to hold a stake in the company of more than 20%; and
 - (b) the company is:
 - (i) a company to which subsection (3) or (4) applies; or
 - (ii) a holding company of a company to which subsection (3) or (4) applies.

Fit and proper person

- (2) The rules may prescribe matters that must be considered in determining whether a person is a fit and proper person for the purposes of paragraphs (1)(a) and 18(1)(d). However, such rules do not limit the matters that may be considered.

New or recently established financial sector company

- (3) This subsection applies to a company if:
- (a) the company is a body corporate incorporated in Australia; and
 - (b) the company has applied for one of the following, but that application has not yet been decided:
 - (i) authority under the *Banking Act 1959* to carry on banking business;
 - (ii) authorisation under the *Insurance Act 1973* to carry on insurance business;
 - (iii) registration under section 21 of the *Life Insurance Act 1995*; and
 - (c) the value of the total resident assets of the company is less than the assets threshold for the company (assuming the company is granted the authority, authorisation or registration concerned).
- (4) This subsection applies to a company if:
- (a) the company is a body corporate incorporated in Australia; and
 - (b) the company is:
 - (i) an authorised deposit-taking institution; or

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- 1 (ii) a company that is authorised under the *Insurance Act*
2 1973 to carry on insurance business; or
3 (iii) a company that is registered under section 21 of the *Life*
4 *Insurance Act 1995*; and
5 (c) at the time of the application under subsection 13(1), the
6 company has been such an institution, or so authorised or
7 registered (whichever is applicable), for less than 5 years;
8 and
9 (d) the value of the total resident assets of the company is less
10 than the assets threshold for the company.

11 *Total resident assets*

- 12 (5) The rules must prescribe the meaning of ***total resident assets*** in
13 relation to a financial sector company.

14 Note: The rules may prescribe different meanings for different classes of
15 financial sector company (see subsection 13(3) of the *Legislation Act*
16 *2003*).

17 *Assets threshold*

- 18 (6) If a company is:
19 (a) an authorised deposit-taking institution; or
20 (b) registered under section 21 of the *Life Insurance Act 1995*;
21 the ***assets threshold*** for the company is:
22 (c) \$200 million; or
23 (d) if another amount is determined in an instrument under
24 subsection (8)—that other amount.
- 25 (7) If a company is authorised under the *Insurance Act 1973* to carry
26 on insurance business, the ***assets threshold*** for the company is:
27 (a) \$50 million; or
28 (b) if another amount is determined in an instrument under
29 subsection (8)—that other amount.
- 30 (8) The Treasurer may, by legislative instrument, determine an amount
31 for the purposes of paragraph (6)(d) or (7)(b).

32 **17 Section 15 (at the end of the heading)**

33 Add “**granted on national interest grounds**”.

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18 Subsection 15(1)

Omit “section 14”, substitute “paragraph 14(1)(a)”.

19 At the end of subsection 15(1)

Add:

Note: See also section 18 (revoking an approval).

20 Subsection 15(2)

Omit “section 14”, substitute “paragraph 14(1)(a)”.

21 Paragraph 15(3)(b)

After “prescribed fee”, insert “(if any)”.

22 After section 15

Insert:

15A Duration of approval granted in relation to a new or recently established financial sector company

- (1) An approval under paragraph 14(1)(b), in relation to a person and in relation to a financial sector company, remains in force until the end of 2 years after the day (the *threshold day*) that the value of the total resident assets of the relevant licensed company for the approval first exceeds the assets threshold for the relevant licensed company.
- (2) However, if the person applies within 90 days of the threshold day for an approval under paragraph 14(1)(a) in relation to the financial sector company, the approval under paragraph 14(1)(b) remains in force:
 - (a) if the application is refused—until the end of 2 years after the day the refusal was notified to the person; or
 - (b) if subsection 20(4) applies to the application—until the end of 2 years after the day the application is taken to be withdrawn under that subsection; or
 - (c) if the application is granted—until the approval under paragraph 14(1)(a) comes into force.
- (3) Also, if:

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1 (a) the person applies for an approval under paragraph 14(1)(a)
2 in relation to the financial sector company more than 90 days
3 after the threshold day; and

4 (b) the application is granted within 2 years of the threshold day;
5 the approval under paragraph 14(1)(b) remains in force until the
6 approval under paragraph 14(1)(a) comes into force.

7 Note: See also section 18 (revoking an approval).

8 *When approval for new financial sector company comes into force*

9 (4) An approval under paragraph 14(1)(b) that is granted on the basis
10 that subsection 14A(3) applies to a company does not come into
11 force until the company is a financial sector company.

12 *Notification of approval ceasing to be in force*

13 (5) If an approval ceases to be in force because of the operation of this
14 section, the Treasurer must arrange for notice of the cessation of
15 the approval:

- 16 (a) to be published in the Gazette; and
17 (b) given to the financial sector company concerned.

18 **23 At the end of paragraph 16(2)(b)**

19 Add:
20 ; or (iii) to which the approval is subject under section 16A.

21 **24 Paragraph 16(4)(b)**

22 After “prescribed fee”, insert “(if any)”.

23 **25 After section 16**

24 Insert:

25 **16A Additional conditions for approval granted in relation to a new** 26 **or recently established financial sector company**

27 (1) An approval under paragraph 14(1)(b) is also subject to the
28 conditions set out in this section, in addition to any conditions to
29 which the approval is subject under section 16.

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Notification if assets threshold exceeded

- 1
- 2 (2) If the holder of the approval receives a notice under section 21A
3 from the relevant licensed company for the approval, the holder
4 must give a written notice to the Treasurer within 30 days that
5 specifies whether the holder intends to either:
6 (a) reduce the stake held in the financial sector company to
7 which the approval relates, to ensure an unacceptable
8 shareholding situation does not come into existence when the
9 approval ceases to be in force; or
10 (b) apply for an approval under paragraph 14(1)(a) in relation to
11 the financial sector company.

12 Note 1: The relevant licensed company for an approval is required to notify
13 the holder of the approval if the assets threshold for the company is
14 exceeded (see section 21A).

15 Note 2: See section 15A in relation to the duration of the approval once the
16 assets threshold is exceeded.

5 yearly review of approval

- 17
- 18 (3) After the end of every 5 year period following the approval coming
19 into force, the holder of the approval must undergo a review by
20 APRA of the approval.

Yearly report of relevant information to APRA

- 21
- 22 (4) The holder of the approval must give to APRA a yearly report of
23 prudential information relevant to the ongoing operation of the
24 approval.
- 25 (5) The report must:
26 (a) be in the approved form; and
27 (b) contain the information (if any) prescribed by the rules; and
28 (c) be provided to APRA within 30 days of the end of each
29 financial year, or such longer period as agreed by APRA.

Functions and powers of APRA

- 30
- 31 (6) The functions of APRA include conducting reviews mentioned in
32 subsection (3).
- 33 (7) APRA may, in writing, approve a form for the purposes of
34 paragraph (5)(a).
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26 Paragraph 17(2)(d)

After “prescribed fee”, insert “(if any)”.

27 At the end of subsection 18(1)

Add:

; or (d) if the approval was granted under paragraph 14(1)(b)—the person is no longer a fit and proper person to hold the approval.

28 Section 19 (at the end of the heading)

Add “—approval granted on national interest grounds”.

29 Paragraph 19(1)(a)

Omit “section 14”, substitute “paragraph 14(1)(a)”.

30 Paragraph 19(1)(a)

Omit “15%”, substitute “20%”.

31 Subsection 19(3)

Omit “section 14” (first occurring), substitute “paragraph 14(1)(a)”.

32 Subsection 19(3)

Omit “15%”, substitute “20%”.

33 After section 19

Insert:

19A Flow-on approvals—approval granted in relation to new or recently established financial sector company

100% subsidiaries of holding company

(1) If:

(a) at a particular time, a person holds an approval under paragraph 14(1)(b) to hold a stake in a financial sector company of more than 20%; and

(b) the financial sector company is a holding company of the relevant licensed company for the approval;

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1 there are taken to be in force at that time approvals of the
2 Treasurer, under section 14, for the person to hold the same
3 percentage stake in:

- 4 (c) the relevant licensed company; and
- 5 (d) each financial sector company that is both:
 - 6 (i) a 100% subsidiary of the holding company; and
 - 7 (ii) a holding company of the relevant licensed company.

8 (2) If, on a particular day, the relevant licensed company for the
9 approval ceases to be a 100% subsidiary of the holding company,
10 the approval that is taken to be in force, because of subsection (1),
11 in relation to that relevant licensed company continues in force
12 until:

- 13 (a) the end of 90 days after that day; or
- 14 (b) if, during that period of 90 days, the person becomes the
15 holder of another approval under section 14 in relation to the
16 relevant licensed company—that other approval comes into
17 force.

18 (3) If, on a particular day, a financial sector company that is covered
19 by paragraph (1)(d):

- 20 (a) ceases to be a 100% subsidiary of the holding company; or
- 21 (b) ceases to be a holding company of the relevant licensed
22 company for the approval;

23 the approval that is taken to be in force, because of subsection (1),
24 in relation to that financial sector company continues in force until:

- 25 (c) the end of 90 days after that day; or
- 26 (d) if, during that period of 90 days, the person becomes the
27 holder of another approval under section 14 in relation to the
28 financial sector company—that other approval comes into
29 force.

30 *Officers of company*

31 (4) If, at a particular time, a company (the *approval company*) holds
32 an approval under paragraph 14(1)(b) to hold a stake in a financial
33 sector company of more than 20%, there is taken to be in force at
34 that time an approval of the Treasurer, under section 14, for each
35 officer of the approval company to hold the same percentage stake
36 in the financial sector company.

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34 At the end of section 20

Add:

- (4) If the applicant does not provide the specified information before the end of the specified period or any longer period agreed to in writing by the Treasurer, the application is taken to be withdrawn.
- (5) A notice under subsection (2) must include a statement about the effect of subsections (3) and (4).

35 After Division 3 of Part 2

Insert:

Division 3A—Reporting by the relevant licensed company for an approval

21A Reporting when assets threshold exceeded

- (1) This section applies to the relevant licensed company for an approval under paragraph 14(1)(b).
- (2) The company must give written notice, in accordance with subsection (3), to APRA and the holder of the approval within 10 days of the day that the value of the total resident assets of the company first exceeds the assets threshold for the company.

Civil penalty: 60 penalty units.

- (3) The notice must specify the day on which the threshold was exceeded.

Note: An approval under paragraph 14(1)(b) is subject to a condition that the holder of the approval take certain actions if a notice is received under this section (see subsection 16A(2)).

36 Division 4 of Part 2 (heading)

Omit “15%”, substitute “20%”.

37 Subparagraph 23(1)(b)(ii)

Omit “15%”, substitute “20%”.

38 Subparagraph 24(1)(c)(ii)

Omit “15%”, substitute “20%”.

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39 Subparagraphs 25(1)(c)(ii) and (f)(ii)

Omit “15%”, substitute “20%”.

40 Part 6 (after the heading)

Insert:

Division 1—Civil liability in certain civil proceedings

41A Application of this Division

This Division does not apply to a civil proceeding in relation to a civil penalty provision of this Act.

41 At the end of Part 6

Add:

Division 2—Civil penalties

43A Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the civil penalty provisions of this Act:

- (a) the Treasurer;
- (b) APRA.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, the Federal Court is a relevant court in relation to the civil penalty provisions of this Act.

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Extension to external Territories etc.

(4) Part 4 of the Regulatory Powers Act, as it applies in relation to the civil penalty provisions of this Act, extends to:

- (a) every external Territory; and
- (b) acts, omissions, matters and things outside Australia.

Liability of Crown

(5) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown liable to a pecuniary penalty.

42 Subsection 44(1)

Omit “The”, substitute “Subject to subsection (1A), the”.

43 Paragraph 44(1)(a)

Omit “(the Australian Prudential Regulation Authority)”.

44 After subsection 44(1)

Insert:

(1A) The Treasurer must not delegate the Treasurer’s power under subsection 45A(2) (power to consent to APRA making rule).

45 After section 45

Insert:

45A Rules

- (1) APRA may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Ministerial consent to rules required

- (2) APRA must not make a rule under subsection (1) unless the Treasurer has consented, in writing, to the making of the rule.
- (3) A consent under subsection (2) is not a legislative instrument.

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Incorporation of other instruments

- 1
2 (4) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may
3 make provision in relation to a matter by applying, adopting or
4 incorporating, with or without modification, any matter contained
5 in an instrument or other writing as in force or existing from time
6 to time.

Scope of the rule-making power

- 7
8 (5) To avoid doubt, the rules may not do the following:
9 (a) create an offence or civil penalty;
10 (b) provide powers of:
11 (i) arrest or detention; or
12 (ii) entry, search or seizure;
13 (c) impose a tax;
14 (d) set an amount to be appropriated from the Consolidated
15 Revenue Fund under an appropriation in this Act;
16 (e) directly amend the text of this Act.
- 17 (6) Rules that are inconsistent with the regulations have no effect to
18 the extent of the inconsistency, but rules are taken to be consistent
19 with the regulations to the extent that the rules are capable of
20 operating concurrently with the regulations.

46 Sections 48 and 49

21
22 Repeal the sections.

47 Paragraphs 4(1)(j) and (k) of Schedule 1

23
24 Omit “15%”, substitute “20%”.

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Part 2—Application and transitional provisions

48 Transitional—existing approvals to hold a stake of more than 20%

- (1) This item applies to an approval under section 14 of the *Financial Sector (Shareholdings) Act 1998* that:
- (a) is in force immediately before the commencement of this item; and
 - (b) approves a person to hold a stake in a financial sector company of more than 20%.
- (2) The approval has effect, after the commencement of this item, as if it had been granted under paragraph 14(1)(a) of the *Financial Sector (Shareholdings) Act 1998* as substituted by this Schedule.
- (3) If an application mentioned in subitem (4):
- (a) was made in relation to the approval before the commencement of this item; and
 - (b) is pending immediately before the commencement of this item;
- the application continues to have effect, after the commencement of this item, in relation to the approval.
- (4) For the purposes of subitem (3), the following are the applications under provisions of the *Financial Sector (Shareholdings) Act 1998*:
- (a) an application under subsection 15(2) for an extension of the period of an approval;
 - (b) an application under paragraph 16(3)(b) in relation to the conditions to which an approval is subject;
 - (c) an application under subsection 17(1) to vary the percentage specified in an approval.

49 Transitional—existing approvals to hold a stake of more than 15% but not more than 20%

- (1) This item applies to an approval under section 14 of the *Financial Sector (Shareholdings) Act 1998* that:
- (a) is in force immediately before the commencement of this item; and

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- 1 (b) approves a person to hold a stake in a financial sector
2 company of more than 15% but not more than 20%.
- 3 (2) Subject to subitem (3), the approval ceases to have effect on and after
4 the commencement of this item.
- 5 (3) If:
- 6 (a) before the commencement of this item, an application under
7 section 17 of the *Financial Sector (Shareholdings) Act 1998*
8 was made in relation to the approval to vary the percentage
9 specified in the approval upwards to a percentage of more
10 than 20%; and
- 11 (b) the application is pending immediately before the
12 commencement of this item;
- 13 then:
- 14 (c) the approval has effect, after the commencement of this item,
15 as if it had been granted under paragraph 14(1)(a) of the
16 *Financial Sector (Shareholdings) Act 1998* as substituted by
17 this Schedule; and
- 18 (d) the application continues to have effect, after that
19 commencement, in relation to the approval; and
- 20 (e) if the application is refused—the approval ceases to have
21 effect from the time of refusal.

50 Transitional—pending application for approval to hold a stake of more than 20%

- 22 (1) This item applies to an application under section 13 of the *Financial*
23 *Sector (Shareholdings) Act 1998* that:
- 24 (a) was made before the commencement of this item; and
25 (b) is seeking approval to hold a stake of more than 20% in a
26 financial sector company; and
27 (c) is pending immediately before the commencement of this
28 item.
- 29 (2) The application has effect, after the commencement of this item, as if
30 the application:
- 31 (a) had been made under section 13 of the *Financial Sector*
32 *(Shareholdings) Act 1998* as amended by this Schedule; and
33 (b) specified that the applicant is seeking for the approval to be
34 granted on the basis of paragraph 14(1)(a) of the *Financial*
35 *Sector (Shareholdings) Act 1998*.
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1 **51 Transitional—pending application for approval to hold a**
2 **stake of more than 15% but not more than 20%**

- 3 (1) This item applies to an application under section 13 of the *Financial*
4 *Sector (Shareholdings) Act 1998* that:
5 (a) was made before the commencement of this item; and
6 (b) is seeking approval to hold a stake of more than 15%, but not
7 more than 20%, in a financial sector company; and
8 (c) is pending immediately before the commencement of this
9 item.
- 10 (2) On the commencement of this item, the application is taken never to
11 have been made.

12 **52 Application of amendment—notice requiring further**
13 **information about applications**

14 Subsections 20(4) and (5) of the *Financial Sector (Shareholdings) Act*
15 *1998*, as added by this Schedule, do not apply in relation to a notice
16 given under subsection 20(2) of that Act before the commencement of
17 this item.