



Banking (prudential standard) determination No. 7 of 2020

Prudential Standard APS 222 Associations with Related Entities

Banking Act 1959

I, John Lonsdale, delegate of APRA:

- (a) under subsection 11AF(3) of the Banking Act 1959 (the Act) REVOKE Banking (prudential standard) determination No. 9 of 2014, including *Prudential Standard APS 222 Associations with Related Entities*, made under that Determination; and
- (b) under subsection 11AF(1) of the Act DETERMINE *Prudential Standard APS 222 Associations with Related Entities*, in the form set out in the Schedule, which applies to all ADIs to the extent provided in paragraphs 2 to 3 of the prudential standard.

This instrument commences on 1 January 2022.

Dated: 8 December 2020

[Signed]

John Lonsdale
Deputy Chair

Interpretation

In this Determination:

ADI has the meaning given in section 5 of the Act.

APRA means the Australian Prudential Regulation Authority.

Schedule

Prudential Standard APS 222 Associations with Related Entities comprises the document commencing on the following page.



Prudential Standard APS 222

Associations with Related Entities

Objectives and key requirements of this Prudential Standard

The objective of this Prudential Standard is that authorised deposit-taking institutions identify, monitor and control contagion risks arising from their associations and dealings with related entities and those creating step-in risk.

The key requirements of this Prudential Standard are that an authorised deposit-taking institution must:

- have a Board-approved policy that governs its associations and dealings with its related entities;
- identify, monitor, manage and control potential contagion risk between the authorised deposit-taking institution and its related entities and step-in risk entities;
- meet minimum requirements with respect to dealings with related entities and step-in risk entities which may give rise to prudential concerns; and
- maintain exposures to related entities within limits.

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Authority

1. This Prudential Standard is made under section 11AF of the *Banking Act 1959* (the **Banking Act**).

Application

2. This Prudential Standard applies to all authorised deposit-taking institutions (**ADIs**), on a **Level 1** basis, except **purchased payment facility providers (PPF providers)**, subject to paragraph 3 of this Prudential Standard.
3. A **foreign ADI** is only required to comply with the requirements in paragraphs 23 to 28 of this Prudential Standard.
4. This Prudential Standard commences on 1 January 2022.

Interpretation

5. Terms that are defined in *Prudential Standard APS 001 Definitions* (APS 001) appear in bold the first time they are used in this Prudential Standard.
6. Where this Prudential Standard provides for APRA to exercise a power or discretion, this power or discretion is to be exercised in writing.
7. In this Prudential Standard, unless the contrary intention appears, a reference to an Act, Regulations or Prudential Standard is a reference to the Act, Regulations or Prudential Standard as in force from time to time.

Definitions

8. The following definitions are used in this Prudential Standard:
 - (a) *control* over an entity includes, but is not limited to, having:
 - (i) more than 50 per cent of voting rights over the entity;
 - (ii) a voting agreement with other shareholders resulting in control of voting rights over the entity;
 - (iii) significant influence over the appointment of persons to or removal of persons from the entity's management, Board of directors (**Board**¹) or board committees;
 - (iv) significant influence over a **senior manager** or senior management of the entity (including influence on the policies of the entity);
 - (b) *ELE subsidiary* means a **subsidiary** that has been approved to be part of an ADI's **extended licensed entity (ELE)**;

¹ A reference to the Board in the case of a foreign ADI, is a reference to the senior officer outside Australia.

- (c) *entity* has the meaning given in section 9 of the *Corporations Act 2001* (Corporations Act) for the purposes of Chapter 2E of that Act, a government-related entity or a trust;
- (d) *funds management* means the provision of investment and related services for the management of investors' funds;²
- (e) *government-related entity* means a public sector entity, a state-owned enterprise or an entity controlled (whether directly or indirectly) by any level of government or a central bank;
- (f) *related entity* of an ADI means an entity which could give rise to risk to the ADI due to conflicts of interest and contagion, where the risk would not arise if the ADI were dealing with an unrelated entity. A *related entity* of an ADI includes, but is not limited to, any of the following:
 - (i) an entity which is directly or indirectly controlled by the ADI;
 - (ii) an entity which directly or indirectly controls the ADI;
 - (iii) a substantial shareholder of the ADI; and
 - (iv) a related individual of the ADI and the related individual's relatives.

Where APRA considers it appropriate, APRA may require an ADI to treat an entity as a related entity;

- (g) *related individual* of an ADI means a senior manager of the ADI, an individual who is a Board member of the ADI or any other individual that is likely to have direct or indirect control over the ADI, the ADI's senior management or the ADI's Board;
 - (h) *step-in risk entity* means an entity to which an ADI is likely to provide support beyond any legal or contractual obligation to do so; and
 - (i) *substantial shareholder* means a person or entity which has a substantial holding in the ADI, where 'substantial holding' has the meaning given in section 9 of the Corporations Act but is read as if it referred to 10 per cent or more of the total number of votes attached to voting shares instead of 5 per cent or more.
9. A *dealing with a related entity* includes, but is not limited to, on- and off-balance sheet credit transactions, support arrangements, asset purchases and sales, service contracts, leasing agreements, derivatives transactions, acquisition of real property, provisions, restructuring and write-offs.

² A funds management vehicle holds assets and issues securities to (or receives funds from) investors in order to facilitate funds management activities.

Adjustments and exclusions

10. APRA may adjust or exclude a specific prudential requirement in this Prudential Standard in relation to one or more specified ADIs.³

Previous exercise of discretion

11. An ADI 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 by APRA under a previous version of this Prudential Standard.

The role of the Board

12. The Board of an ADI is ultimately responsible for oversight of the ADI's associations with its related entities and for approving policies governing the ADI's dealings and associations with its related entities. The Board must **ensure** these policies are reviewed at least annually and that they remain adequate and appropriate for the ADI's risk appetite, risk profile, capital, balance sheet size and the complexity of the ADI's **group**.

Control of risks arising from related entities

13. An ADI's policies on dealings and associations with related entities must consider contagion risks to the ADI that arise from its group structure and related entities, and form part of the ADI's risk management strategy and **risk management framework** required under *Prudential Standard CPS 220 Risk Management*. An ADI must assess contagion risks to the ADI on a regular basis, at least annually, taking into consideration:
 - (a) the number and size of entities within its group and the complexity of the group structure;
 - (b) the adequacy of systems, controls and risk management across the group;
 - (c) the level of financial and operational interdependence across the group;
 - (d) whether other members of the group are regulated entities (i.e. regulated by APRA or by an equivalent prudential regulator overseas);
 - (e) whether the location of the ADI's subsidiaries undermines the ability of its subsidiaries to be resolved in a sound and timely manner; and
 - (f) badging and product distribution arrangements that might link the ADI's reputation to other entities.
14. An ADI's policies on dealings and associations with related entities must be based on an assessment of material risks to the ADI and, at a minimum, include:

³ Refer to subsection 11AF(2) of the Banking Act.

- (a) a requirement that the ADI deal with related entities on an arm's-length basis and on market terms and conditions;
 - (b) limits on exposures to related entities at both an individual and aggregate level, which are determined having regard to:
 - (i) the level that would be approved for unrelated entities of an equivalent credit status; and
 - (ii) the impact on the ADI's stand-alone capital and liquidity positions in the event of a failure of a related entity;
 - (c) the circumstances in which the limits relating to exposures and write-offs may be exceeded and the authority and processes required for approving such excesses;
 - (d) the authority and processes required for the approval and maintenance of group structures, where the ADI is the head of a group, and establishing and acquiring subsidiaries;
 - (e) procedures to address risks arising from participation in group operations (refer to paragraphs 27 and 28 of this Prudential Standard);
 - (f) procedures for resolving conflicts of interest arising from dealings with related entities;
 - (g) processes to ensure the transparency of third-party dealings that are connected with related entities; and
 - (h) procedures to address material risks to the ADI arising from the ADI distributing financial products of another counterparty and vice-versa.
15. An ADI's Board must first approve the terms and conditions agreed to by an ADI in relation to dealings with its related entities that are not consistent with terms and conditions that would be negotiated with an unrelated entity with justifications fully and clearly documented in a register.
16. An ADI must not:
- (a) have unlimited exposures to related entities either in aggregate or at an individual entity level; or
 - (b) agree to cross-default provisions whereby a default by a related entity on an obligation, whether financial or otherwise, triggers or is deemed to trigger a default by the ADI on its obligations.
17. An ADI must implement adequate systems and controls to identify, measure, monitor, manage and report exposures arising from dealings with related entities and step-in risk entities. Where APRA is not satisfied with the adequacy of the ADI's systems and controls or is of the view that the ADI is exposed to substantial contagion risk, APRA may:

- (a) determine higher capital adequacy requirements including **Prudential Capital Requirements (PCRs)** for the ADI;
 - (b) require the ADI to establish additional internal controls or a more robust reporting mechanism; or
 - (c) require the ADI to take measures to reduce the level of contagion risk to its related entities or step-in risk entities.
18. An ADI must meet the requirements in relation to the identification, measurement and management of step-in risk as set out in Attachment A to this Prudential Standard.

Provision of support

19. An ADI must not undertake any dealings with unrelated entities for the purpose of supporting the business of related entities.
20. An ADI must not provide support to related entities, and an ADI must not accept support from its related entities, unless such support is expressed clearly in legal documentation, is fixed as to time and amount, and is in accordance with the ADI's policies and the prudential requirements set out in paragraphs 13 to 17 of this Prudential Standard.⁴
21. An ADI must satisfy APRA, upon request, that when it purchases assets from or securities or other forms of liabilities issued by a related entity, or sells assets and securities to a related entity, that these activities do not constitute the ADI providing capital support to the related entity. APRA may require an ADI to deduct from **Common Equity Tier 1 Capital** the value of assets, securities or other liabilities where APRA is not satisfied that the activities do not constitute the provision of capital support.
22. An ADI must meet the requirements in Attachment B to this Prudential Standard in relation to the provision of liquidity facilities to funds management vehicles.
23. A foreign ADI must not provide support to its subsidiaries operating in Australia, and a foreign ADI must not accept support from its subsidiaries operating in Australia, unless such support is expressed clearly in legal documentation and is fixed as to time and amount. A foreign ADI that wishes to give a general guarantee over the obligations of its Australian subsidiaries must be able to demonstrate to APRA that its home supervisor is aware of the obligations and has no objection to the transaction.

⁴ For the avoidance of doubt, paragraph 20 also applies to provision of support by a **foreign-owned ADI** to non-ADI entities operating in Australia directly owned by the ADI's foreign parent or by the parent's subsidiaries (and vice versa).

Group badging and disclosures

24. An ADI must not use a brand name in common with members of its **conglomerate group** except where the ADI and group members clearly and prominently disclose their roles and responsibilities in order to reduce the risk of giving the impression that a non-ADI member of the group is an ADI, or that a group member is guaranteed or supported by an ADI in the group.
25. Unless otherwise prohibited by the laws of a foreign jurisdiction, when there are financial transactions between an external counterparty and a member of the ADI's group that uses a common brand name with the ADI, the ADI must ensure that disclosure to the external counterparty includes that:
 - (a) the group member with whom the counterparty is dealing is not an ADI (where this is the case) and that the member's obligations do not represent deposits or other liabilities of the ADI in the group;
 - (b) the ADI does not stand behind the group member, unless support is provided for in legal documentation (refer to paragraphs 20 and 23 of this Prudential Standard). Where support is provided for, the nature and limitations of the ADI's obligations arising from its involvement must be disclosed; and
 - (c) the investor is exposed to investment risk including possible delays in repayment and loss of income and principal invested, as relevant.
26. APRA may require an ADI to not use a brand name in common with a group member if that would give rise to a prudential concern having regard to the following factors:
 - (a) the presence of appropriate disclosures;
 - (b) the type of entity involved (whether the group member is regulated or unregulated);
 - (c) the group member's risk profile, reputation and associations;
 - (d) the manner in which various products and services are marketed;
 - (e) the types of customers involved with the group member; and
 - (f) other factors on a case-by-case basis.

Participation in group operations

27. An ADI must establish policies and procedures to address risks posed to the ADI from participating in group operations including, but not limited to, sharing premises with other group members, centralising back-office functions or outsourcing services to other group members.
28. Where an ADI participates in group operations, the ADI must:

- (a) ensure that those operations do not adversely affect the safety and soundness of the ADI as a stand-alone entity;
- (b) be satisfied that any exposures generated are addressed by the ADI's policies and procedures on participating in group operations;
- (c) ensure dealings with other parties arising from participation in group operations are appropriately documented in written service agreements;⁵
- (d) ensure there is a clear documented obligation for a service provider to comply with a direction given by APRA in relation to the operations of the ADI; and
- (e) ensure such operations are not likely to lead to confusion for customers about the respective roles and responsibilities of the ADI and the group member.

Limits on exposures to related entities

29. The exposures of an ADI to its related entities must not exceed the following limits:⁶

- (a) related ADIs or overseas based equivalents:
 - (i) exposure to an individual related ADI or overseas based equivalent – 25 per cent of an ADI's **Tier 1 Capital** on a Level 1 basis; and
 - (ii) aggregate exposure to all related ADIs and overseas based equivalents – 75 per cent of an ADI's Tier 1 Capital on a Level 1 basis; and
- (b) other related entities:
 - (i) exposure to an individual regulated related entity (other than a related ADI or related overseas-based equivalent) – 25 per cent of an ADI's Tier 1 Capital on a Level 1 basis;
 - (ii) exposure to an individual unregulated related entity – 15 per cent of an ADI's Tier 1 Capital on a Level 1 basis; and
 - (iii) aggregate exposure to all related entities (other than related ADIs and related overseas-based equivalents) – 35 per cent of an ADI's Tier 1 Capital on a Level 1 basis.

⁵ Outsourcing of the ADI's material business activities to a related entity must satisfy the prudential requirements set out in *Prudential Standard CPS 231 Outsourcing*.

⁶ These limits are measured against an ADI's or ELE's Level 1 capital calculated in accordance with *Prudential Standard APS 111 Capital Adequacy: Measurement of Capital* as appropriate. None of these limits should be taken to permit transactions or exposures which are otherwise prohibited by any Prudential Standard. The large exposure limits in paragraph 30 of *Prudential Standard APS 221 Large Exposures* do not apply to the exposures of an ADI to its related entities when this paragraph applies.

30. An ADI's exposure to an ELE subsidiary is not subject to the limits in paragraph 29 of this Prudential Standard or requirements in *Prudential Standard APS 111 Capital Adequacy: Measurement of Capital* (APS 111) relating to the treatment of investments in and capital support provided to an ADI's subsidiaries.⁷
31. An ADI must meet the requirements in relation to its ELE subsidiaries as set out in Attachment C to this Prudential Standard.
32. An ADI's exposures to the foreign parent of the ADI, the foreign parent's overseas based subsidiaries and their directly owned non-ADI entities operating in Australia are required to be within the limits in *Prudential Standard APS 221 Large Exposures* (APS 221).
33. Notwithstanding paragraph 29 of this Prudential Standard, APRA may set specific limits in relation to an ADI's exposure to one or more related entities having regard to the ADI's individual circumstances.

Measuring exposures to related entities

34. An ADI's exposure to a related entity is the aggregate of all claims, commitments and contingent liabilities arising from on- and off-balance sheet transactions in both the banking and trading books with the related entity, and must be measured in accordance with Attachment A to APS 221.
35. An ADI's exposure to a regulated related entity must be measured in accordance with paragraph 34 of this Prudential Standard and must include any equity exposures and capital support provided to the regulated related entity (including any off-balance sheet exposure arising from guarantee of capital instruments issued by the related entity) that has not been deducted from the ADI's Level 1 capital for capital adequacy purposes.
36. Where an ADI is required to apply the look-through requirement in Attachment A to APS 221 for an exposure to a structured vehicle that is a related entity and the ADI has an exposure to an underlying asset that is another related entity of the ADI, the ADI must recognise all of these exposures under the limits in paragraph 29 of this Prudential Standard.
37. An ADI's exposure to a related entity excludes the exposures specified in paragraph 18 of APS 221.

Prior notification requirements

38. An ADI must notify APRA prior to:
 - (a) establishing or acquiring a subsidiary other than an entity which is to be used purely as a special purpose vehicle to provide finance to the ADI;

⁷ Refer to paragraph 8 of Attachment D to APS 111 on equity holdings and other capital support provided to financial institutions.

- (b) committing to any proposal to acquire (whether directly or indirectly) greater than, or equal to, 20 per cent of the equity interest in an entity; or
 - (c) committing to any proposed exposure to a related entity that is greater than, or equal to, 10 per cent of the ADI's Tier 1 Capital.
39. APRA may require an ADI to not proceed with a transaction that has been subject to the prior notification requirements in paragraph 38 of this Prudential Standard, or impose prudential conditions on the transaction or higher capital adequacy requirements on the exposure, if APRA is not satisfied with the ADI's risk assessment. Factors that APRA will consider include, but are not limited to:
- (a) the ADI's assessment of the factors in paragraph 13 of this Prudential Standard;
 - (b) the adequacy of the ADI's systems, controls and resources to identify, measure, monitor, manage and report exposures and risks arising from the activity; and
 - (c) whether the transaction exposes the ADI to substantial contagion risks or hinders effective supervision.
40. APRA may determine that an ADI is not required to notify APRA prior to committing to proposed transactions that are below a specified threshold, having regard to the robustness of the ADI's risk management framework.

Notification requirements

41. An ADI must notify APRA immediately of any breach of the limits in paragraph 29 of this Prudential Standard or other specific limits imposed by APRA under paragraph 33 of this Prudential Standard, including how the breach arose and remedial actions taken or planned to deal with the breach.⁸
42. An ADI must notify APRA regarding any equity investments that are not subject to the prior notification requirements set out in paragraph 38 of this Prudential Standard, within three months of undertaking the investment.
43. An ADI must notify APRA immediately after it becomes aware of any circumstances that might reasonably be seen as having a material impact or potentially adverse consequences for an ADI in the group or for the overall group. This includes, but is not limited to, material changes in the structure of a group which is headed by the ADI and a significant breach of, or material changes in, the ADI's policies on dealings with related entities.

Approval requirements

44. An ADI must obtain approval from APRA prior to undertaking any proposed exposures in excess of the limits set out in paragraph 29 of this Prudential

⁸ This does not apply to an exposure for which APRA has provided an approval under paragraph 44 of this Prudential Standard.

Standard or any specific limit imposed by APRA under paragraph 33 of this Prudential Standard. APRA will only grant such approval on an exceptions basis taking into consideration the individual circumstances of the ADI and the ADI's assessment of:

- (a) the contagion risks involved with exceeding the limits (including the factors in paragraph 13 of this Prudential Standard) and why the proposed exposures will not unreasonably expose the ADI to excessive risk; and
 - (b) how the proposed exposures are consistent with its policies on related entities.
45. An ADI must obtain approval from APRA prior to the establishment or acquisition of a regulated entity, branch or presence domestically or overseas.

Attachment A — Step-in risk

1. An ADI must maintain a risk appetite statement and strategy for managing its associations and dealings with step-in risk entities.
2. An ADI must have adequate systems and controls in place to identify, measure, monitor, manage and report exposures arising from dealings with step-in risk entities.
3. An ADI must identify an entity which exposes the ADI to step-in risk. In identifying step-in risk entities, the factors that an ADI must consider include, but are not limited to:
 - (a) the nature and extent of the ADI's sponsorship of the entity, including whether the ADI manages or advises the entity, places its securities into the market, or provides the entity with liquidity facilities or credit enhancements;
 - (b) whether investors expect the ADI to support the entity during a stress scenario;
 - (c) whether business arrangements with the entity (e.g. distributing or marketing of the other entity's products) expose the ADI to reputational contagion;
 - (d) whether the entity has a limited capacity to access liquidity when facing an unanticipated increase in redemption requests;
 - (e) whether the ADI is a major provider of assets, or is perceived to be a major provider of assets, or other financial services to the entity;
 - (f) whether the entity carries the ADI's brand; and
 - (g) whether there have been past instances of the entity receiving support from the ADI beyond the ADI's legal or contractual obligation.
4. Where an ADI has identified a step-in risk entity, the ADI must determine the materiality of the step-in risk through an assessment of the potential impact on the capital and liquidity of the ADI if it were to step-in to support the entity.

Attachment B — Funds management

1. The requirements in this Attachment apply to an ADI's associations with a funds management vehicle that is a related entity of the ADI. Where an ADI has an exposure to a funds management vehicle that is an unrelated entity, the ADI must meet the requirements in APS 221 with respect to exposure limits and look-through requirements for structured vehicles.

Separation

2. An ADI must not act as a manager, responsible entity, approved trustee, trustee⁹ or any similar role in relation to funds management.
3. An ADI must deal with a funds management vehicle and its investors on an arm's-length basis and on market terms and conditions.
4. An ADI must not:
 - (a) have any ownership or beneficial interest in a funds management vehicle;⁹ or
 - (b) allow any of the ADI's directors, officers or employees to sit on the Board of a funds management vehicle unless the Board is made up of at least four members. The ADI may be represented by one director on a Board of four to six directors and by no more than two directors on a Board of seven or more directors.
5. The requirements in paragraph 4 do not apply to an ADI's ownership or beneficial interest in, or seats on the Board of:
 - (a) a custodian;
 - (b) a life insurance company and its statutory funds regulated by APRA or an equivalent regulator overseas;
 - (c) an RSE licensee or custodian established under provisions of the *Superannuation Industry (Supervision) Act 1993* or equivalent legislation overseas;
 - (d) a licensed trustee company of a common fund, within the meaning of Chapter 5D of the Corporations Act; or
 - (e) a responsible entity of a managed investment scheme, within the meaning of section 9 of the Corporations Act, or similar entities registered under like statutory provisions overseas.

⁹ For the avoidance of doubt, this does not apply to purchases of a fund management vehicle's securities, which must comply with paragraph 6 of this Attachment.

Purchase of securities

6. An ADI must not purchase more than 20 per cent of the outstanding value of a funds management vehicle's securities unless the purchase arises as part of an underwriting agreement.

Liquidity facilities

7. An ADI must deduct the value of a liquidity facility provided to a funds management vehicle, from the ADI's Common Equity Tier 1 Capital, if any of the following conditions are met:
 - (a) the facility is able to be drawn upon to fund additional assets held by the vehicle, to acquire assets of the vehicle, to fund the final scheduled repayment of investors or to cover against dilution of seller's risk (e.g. the cancellation of assets or breach of warranties);
 - (b) the repayments of the facility to the ADI are subordinated to the interests of investors; or
 - (c) the facility is provided without another facility being provided by an unrelated entity to the funds management vehicle, unless the ADI provides a liquidity facility that covers less than 10 per cent of outstanding securities and is used for the purpose of:
 - (i) providing short-term funding for smoothing time differences in payment flows (excluding the retirement of securities at maturity or on roll-overs);
 - (ii) meeting margin payments on futures transactions; or
 - (iii) covering delays in settling asset transactions involving the vehicle.

Underwriting of funds management vehicles

8. An ADI that acts as an underwriter or committed dealer for the issue of securities by a funds management vehicle must deduct the value of the facility from the ADI's Common Equity Tier 1 Capital if:
 - (a) the funds management vehicle does not have an express right to select an alternative party to provide the facility;
 - (b) the ADI does not have the ability to withhold payment, and to terminate the facility if necessary, upon the occurrence of events which would materially and negatively impact the soundness of the ADI; and
 - (c) the ADI underwrites a significant proportion of the issue of securities and either of the following conditions exist:
 - (i) the ADI cannot demonstrate its ability in placing securities of the type underwritten; or

- (ii) the amount of the ADI's aggregate commitment under all underwriting facilities as sole dealer is more than 20 per cent of the ADI's Tier 1 Capital.
- 9. An ADI that underwrites the issue of securities by a funds management vehicle must not hold more than 20 per cent of the outstanding value of a funds management vehicle's securities after two months of the underwriting agreement's commencement. Additionally, from two months after the underwriting agreement's commencement, any exposure over this amount must be deducted from Common Equity Tier 1 Capital.

Attachment C — Extended Licensed Entity

1. An ADI must obtain approval from APRA to treat one or more of its subsidiaries as consolidated with the ADI itself, to form an ELE for prudential and reporting purposes.¹⁰
2. An ELE subsidiary that no longer meets the criteria in paragraph 3 of this Attachment will cease to form part of the ELE and must be treated as a non-ELE related entity of the ADI. An ADI must inform APRA as soon as it becomes aware that an ELE subsidiary is likely to or no longer satisfies the criteria set out in this Attachment.
3. In order for a subsidiary to be eligible to be consolidated with the ADI itself to form an ELE:
 - (a) the subsidiary must:
 - (i) be incorporated in Australia unless the subsidiary has been established to borrow on behalf of the ADI and continues to restrict its activities to solely borrowing on behalf of the ADI;
 - (ii) be wholly owned by the ADI, and the Board of the subsidiary must be composed entirely of members of the ADI's Board or senior management;
 - (iii) not be an entity regulated directly by APRA or by an equivalent regulator overseas;
 - (iv) not undertake any business that the ADI is prevented from conducting under the Banking Act;
 - (v) not be structured, or undertake business, for the purpose of circumventing APRA's prudential or reporting requirements; and
 - (vi) not undertake borrowings from, or establish liabilities (either on- or off-balance sheet) to, entities other than the ADI, except where the subsidiary has been established to borrow on behalf of the ADI, and all funds are on-lent directly to the ADI. Taxation liabilities, employee entitlements, administration and operating expenses of the subsidiary are excluded from this requirement; and
 - (b) the ADI must:
 - (i) have complete information on the individual assets, liabilities and off-balance sheet positions of the subsidiary. The ADI must have access to the stand-alone accounting records of the subsidiary, and

¹⁰ For the avoidance of doubt, a reference to an ADI in this Attachment means an ADI as defined in section 5 of the Banking Act, rather than an ELE.

must be able to provide APRA with full and unfettered access to those records and any other information, at any time;

- (ii) have unrestricted control over the composition of the subsidiary's assets and liabilities. The ADI must demonstrate to APRA that there are no legal or regulatory barriers, or any other material risks, to the transfer of any assets or funds including assets or funds of underlying subsidiaries back to the ADI. There must be no legal obstacle to the ADI instituting a wind-up of the subsidiary, or any underlying subsidiaries, at any time and placing the remaining assets on the balance sheet of the ADI;
 - (iii) manage the assets, liabilities and off-balance sheet business of the subsidiary as part of its internal management practices. This includes reporting structures, accounting processes, audit arrangements and risk management and measurement systems. The ADI's risk management processes, management information systems and internal controls must be applied to the operations of the subsidiary. Senior management of the ADI must monitor the operations of the subsidiary to the same extent as the operations of the ADI itself. Systems for monitoring and control over the subsidiary must be included within the internal and external audit programs of the ADI; and
 - (iv) satisfy APRA that the number and size of subsidiaries on an individual and aggregate basis proposed to be included, or currently included, in the ELE does not undermine the ability:
 - (A) of the ADI and the subsidiaries to be managed and resolved in a sound and timely manner; and
 - (B) for APRA to assess the soundness of the ADI as a stand-alone legal entity.
4. Where an ADI seeks to include a non-operating holding company (NOHC) as part of its ELE, the ADI may also include the NOHC's subsidiaries as part of the ELE provided these subsidiaries meet the requirements in this Attachment. However, only the first level of subsidiaries below a NOHC are eligible to be treated as part of the ELE.
5. In assessing whether a subsidiary should form part of an ELE, APRA will have regard to the requirements in this Attachment, as well as the substance and form of the subsidiary and its relationship with the ADI. APRA may, at its discretion, require an ADI to provide additional information, including the provision of an accounting or legal opinion, on any of the requirements in this Attachment or deem that a subsidiary is no longer eligible to form part of an ELE.