

2004-2005-2006-2007

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Financial Sector Legislation Amendment  
(Restructures) Bill 2007**

**No.     , 2007**

*(Treasury)*

**A Bill for an Act to amend certain laws relating to  
the financial sector, and for related purposes**



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## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedule(s) .....	1
<b>Schedule 1—Restructure relief: corporations law aspects</b>		<b>3</b>
	<i>Financial Sector (Transfers of Business) Act 1999</i>	3
<b>Schedule 2—Restructure relief: taxation aspects</b>		<b>17</b>
	<i>Income Tax Assessment Act 1997</i>	17
<b>Schedule 3—Consequential amendments</b>		<b>21</b>
	<i>Australian Prudential Regulatory Authority Act 1998</i>	21
	<i>Financial Sector (Transfers of Business) Act 1999</i>	21
	<i>Income Tax Assessment Act 1997</i>	22
	<i>Life Insurance Act 1995</i>	24



1     **A Bill for an Act to amend certain laws relating to**  
2     **the financial sector, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Financial Sector Legislation*  
6                     *Amendment (Restructures) Act 2007*.

7     **2 Commencement**

8                     This Act commences on the day on which it receives the Royal  
9                     Assent.

10    **3 Schedule(s)**

11                     Each Act that is specified in a Schedule to this Act is amended or  
12                     repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

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2 **Schedule 1—Restructure relief: corporations**  
3 **law aspects**  
4

5 *Financial Sector (Transfers of Business) Act 1999*

6 **1 Subsection 4(1)**

7 Insert:

8 *general insurer* has the meaning given by the *Insurance Act 1973*.

9 **2 Subsection 4(1)**

10 Insert:

11 *holding company*, of a body corporate, means another body  
12 corporate of which the first body corporate is a subsidiary.

13 **3 Subsection 4(1)**

14 Insert:

15 *internal transfer certificate* has the meaning given by section 36L.

16 **4 Subsection 4(1)**

17 Insert:

18 *NOHC* is short for non-operating holding company.

19 **5 Subsection 4(1)**

20 Insert:

21 *non-operating holding company*, of a body corporate, has the  
22 same meaning as in the *Banking Act 1959*.

23 **6 Subsection 4(1)**

24 Insert:

25 *operating body* has the meaning given by section 36B.

26 **7 Subsection 4(1) (definition of *receiving body*)**

27 Repeal the definition, substitute:

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*receiving body* means:

- (a) in relation to a transfer of business under Part 3 or 4—a body corporate to which another body corporate is to transfer, or has transferred, business under that Part; or
- (b) in relation to an internal transfer certificate (see section 36L)—a body corporate to which another body corporate is to transfer, or has transferred, assets or liabilities under the certificate.

**8 Subsection 4(1)**

Insert:

*related*—a body corporate is *related* to another body corporate if:

- (a) the first body is a holding company of the other body; or
- (b) the first body is a subsidiary of the other body; or
- (c) the first body is a subsidiary of a holding company of the other body.

**9 Subsection 4(1)**

Insert:

*restructure approval* has the meaning given by section 36B.

**10 Subsection 4(1)**

Insert:

*restructure arrangement* has the meaning given by section 36B.

**11 Subsection 4(1)**

Insert:

*restructure instrument* has the meaning given by section 36G.

**12 Subsection 4(1)**

Insert:

*subsidiary*, of a body corporate, means a body corporate that is a subsidiary of the first body by virtue of Division 6 of Part 1.2 of the *Corporations Act 2001*.

**13 Subsection 4(1) (definition of *transferring body*)**

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1 Repeal the definition, substitute:

2 ***transferring body*** means:

- 3 (a) in relation to a transfer of business under Part 3 or 4—a body  
4 corporate that is to transfer, or that has transferred, business  
5 under that Part; or  
6 (b) in relation to an internal transfer certificate (see  
7 section 36L)—a body corporate that is to transfer, or that has  
8 transferred, assets or liabilities under the certificate.

9 **14 After Part 4**

10 Insert:

11 **Part 4A—Restructures**

12 **Division 1—Outline of Part**

13 **36A Outline of Part**

- 14 (1) This Part deals with proposals by an ADI, general insurer or life  
15 insurer (the ***operating body***) for a restructure arrangement (under  
16 Part 5.1 of the *Corporations Act 2001*) that would make the  
17 operating body a subsidiary of a non-operating holding company  
18 (***NOHC***).
- 19 (2) The operating body may apply (under section 36B) to the Minister  
20 for a restructure approval, including a restructure instrument (see  
21 section 36G).
- 22 (3) A restructure instrument gives relief to the operating body, the  
23 ***NOHC*** and related bodies corporate (and some other persons) from  
24 certain requirements of the *Corporations Act 2001*, as specified in  
25 the instrument (see section 36G).
- 26 (4) The Minister must issue the restructure approval if specified  
27 criteria are met (see section 36C). The approval may be issued  
28 subject to conditions (see section 36E).
- 29 (5) After the Minister issues the restructure approval, APRA may issue  
30 internal transfer certificates for the purpose of giving effect to the  
31 restructure arrangement.

- 1 (6) An internal transfer certificate enables the transfer of assets or  
2 liabilities (or both) between 2 bodies corporate (the *transferring*  
3 *body* and the *receiving body*) that are part of the company group  
4 (see section 36L).
- 5 (7) The restructure instrument comes into force when the court order  
6 providing for the restructure comes into force, if any applicable  
7 conditions of the restructure approval have been satisfied (see  
8 sections 36E and 36H).
- 9 (8) Any transfer provided for by an internal transfer certificate comes  
10 into force as specified in the certificate (see section 36Q).

## 11 Division 2—Restructure approvals

### 12 36B Restructure approvals—application

- 13 (1) This section applies if:
- 14 (a) any of the following bodies (the *operating body*) proposes to  
15 enter into an arrangement (a *restructure arrangement*) to be  
16 approved by an order of the Court under subsection 411(4) of  
17 the *Corporations Act 2001*:
- 18 (i) an ADI;
- 19 (ii) a life insurance company;
- 20 (iii) a general insurer; and
- 21 (b) the arrangement would result in the operating body becoming  
22 a subsidiary of a NOHC.
- 23 (2) The operating body may apply in writing to the Minister for an  
24 approval (the *restructure approval*):
- 25 (a) that includes a restructure instrument (see section 36G); and
- 26 (b) that authorises APRA to issue one or more internal transfer  
27 certificates under section 36M.
- 28 (3) The application must be in the form prescribed by the transfer  
29 rules, and must contain or be accompanied by the information  
30 required by the transfer rules.
- 31 (4) The operating body must give a copy of the application to APRA.

**36C Restructure approvals—issued by Minister**

- (1) The Minister must, in writing, issue a restructure approval if the Minister is satisfied that:
- (a) application for the approval has been made by an operating body in accordance with section 36B; and
  - (b) the restructure arrangement would improve the operating body's ability to meet its prudential requirements; and
  - (c) the approval should be issued, having regard to:
    - (i) the interests of the depositors or policy owners of the operating body; and
    - (ii) the interests of the financial sector as a whole; and
    - (iii) any other matters considered relevant.
- (2) The approval must include the following:
- (a) a statement describing the restructure arrangement;
  - (b) the restructure instrument;
  - (c) any conditions imposed under section 36E.
- (3) The approval authorises APRA to issue one or more internal transfer certificates under section 36M.
- (4) In this section:

*prudential requirements*, in relation to an operating body, means requirements applying to the body under the following prudential standards determined by APRA:

- (a) if the body is an ADI—standards in force under section 11AF of the *Banking Act 1959*;
- (b) if the body is a life insurance company—standards in force under section 360A of the *Life Insurance Act 1995*;
- (c) if the body is a general insurer—standards in force under section 32 of the *Insurance Act 1973*.

**36D Restructure approvals—consultation**

In deciding whether to issue a restructure approval, the Minister may consult with any or all of the following:

- (a) APRA;
- (b) the Australian Securities and Investments Commission;

- 1 (c) any other person or body the Minister considers should be  
2 consulted.

3 **36E Restructure approvals—conditions**

4 *Imposition of conditions*

- 5 (1) A restructure approval may impose conditions of any of the  
6 following kinds, to be satisfied by the operating body or any  
7 related body corporate, or any body corporate that is to be a related  
8 body corporate pursuant to the arrangement (for example, the body  
9 that is to become the NOHC):
- 10 (a) conditions to be satisfied before the restructure instrument  
11 comes into force (see section 36H);
- 12 (b) conditions to be satisfied before any transfer pursuant to an  
13 internal transfer certificate comes into force in respect of any  
14 particular asset or liability (see section 36Q).

15 *Amendment or revocation of conditions*

- 16 (2) The operating body may apply in writing to the Minister to have a  
17 condition that applies to it (or any other body corporate) amended  
18 or revoked.
- 19 (3) The Minister may, by notice in writing given to the operating body,  
20 approve the amendment or revocation if it is satisfied that the  
21 amendment or revocation is appropriate, having regard to the  
22 matters mentioned in paragraphs 36C(1)(b) and (c).
- 23 (4) An amendment or revocation that is approved by the Minister has  
24 effect in accordance with the notice under subsection (3).

25 **36F Restructure approvals—notice of decision**

- 26 (1) If the Minister issues a restructure approval, the Minister must give  
27 a copy of the approval to the operating body and to APRA.
- 28 (2) If the Minister refuses to issue a restructure approval, the Minister  
29 must give written notice of the refusal to the operating body and to  
30 APRA. The notice must include a statement of the reasons why the  
31 approval was refused.

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**Division 3—Restructure instruments**

**36G What is a *restructure instrument*?**

(1) A *restructure instrument* included in a restructure approval is an instrument in relation to an operating body that gives relief (as mentioned in subsection (2)) to any or all of the following, as specified in the instrument:

- (a) the NOHC that is the subject of the restructure approval;
- (b) any body corporate related to that NOHC;
- (c) if the instrument specifies a requirement in Division 1 of Part 2J.1 of the *Corporations Act 2001*—any other person involved in complying with the requirement.

(2) The Minister may specify in the instrument:

- (a) that the bodies and persons specified in the instrument are given relief from specified requirements of Division 1 of Part 2J.1, or Part 2J.2, of the *Corporations Act 2001*, in accordance with the instrument; and
- (b) the extent (if any) to which the bodies specified in the instrument are given relief from the requirement in section 254T of that Act.

Note 1: Division 1 of Part 2J.1 of the *Corporations Act 2001* deals with restrictions in share capital. Part 2J.2 of that Act deals with self-acquisition and control of shares.

Note 2: Section 254T of that Act provides that dividends may only be paid out of the profits of a company.

Note 3: For the legal effect of the instrument, see section 36J.

(3) A restructure instrument is not a legislative instrument.

**36H Restructure instruments—coming into force**

(1) A restructure instrument comes into force only if:

- (a) a court makes an order under subsection 411(4) of the *Corporations Act 2001* approving the restructure arrangement; and
- (b) the arrangement (as ordered) is in accordance with the restructure approval; and

1 (c) any conditions mentioned in paragraph 36E(1)(a) to which  
2 the restructure approval is subject have been satisfied by the  
3 time the court order comes into force.

4 (2) A restructure instrument comes into force at the time the court  
5 order mentioned in subsection (1) comes into force.

### 6 **36J Restructure instruments—legal effect**

7 A restructure instrument gives relief, in accordance with the  
8 instrument, from the requirements of the *Corporations Act 2001*  
9 specified in the instrument.

10 Note: Section 36G specifies the requirements of the *Corporations Act 2001*  
11 that may be covered by the instrument.

### 12 **36K Restructure instruments—amendment**

13 (1) This section applies if a restructure instrument in relation to an  
14 operating body has come into force.

15 (2) The Minister may, by notice in writing to the operating body,  
16 amend the restructure instrument, if the Minister is satisfied that  
17 the amendment is necessary or desirable to take into account  
18 changes in the requirements of the *Corporations Act 2001*  
19 mentioned in the instrument.

20 (3) The notice must include:  
21 (a) a copy of the amended instrument; and  
22 (b) a statement of the reasons why it is made; and  
23 (c) a statement of when the amendment is to come into force.

24 (4) The Minister must give a copy of the notice to APRA.

25 (5) The amendment comes into force at the time stated in the notice.

26 (6) Subsection 33(3) of the *Acts Interpretation Act 1901* does not  
27 apply in relation to any amendment or variation of the restructure  
28 instrument.

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**Division 4—Internal transfer certificates**

**36L What is an *internal transfer certificate*?**

An *internal transfer certificate* is a certificate, issued by APRA under section 36M for the purpose of giving effect to a restructure arrangement described in a restructure approval, giving effect to the transfer of specified assets and liabilities between any 2 of the following bodies (including a transfer between any 2 subsidiaries of the NOHC):

- (a) the NOHC that is the subject of the restructure arrangement;
- (b) the operating body;
- (c) any other subsidiary of the NOHC.

Note: The assets or liabilities may be specified by reference to a class or classes of assets or liabilities—see subsection 33(3A) of the *Acts Interpretation Act 1901*.

**36M Internal transfer certificates—issue**

- (1) This section applies if the Minister issues a restructure approval.
- (2) APRA may, in writing, issue an internal transfer certificate if it is satisfied that the transfer is, and the terms of the transfer are, appropriate for the purpose of giving effect to the restructure arrangement (as described in the approval), having regard to:
  - (a) the application for the restructure approval; and
  - (b) any additional information given by the operating body; and
  - (c) the matters mentioned in paragraphs 36C(1)(b) and (c) (restructure approvals—issue).
- (3) The certificate must:
  - (a) include the names of the transferring body and the receiving body; and
  - (b) include a statement of all the assets and liabilities of the transferring body that are to be transferred to the receiving body; and
  - (c) if the certificate is to come into force (in any respect) after the restructure instrument comes into force (see section 36H)—state a time or a method for working out when it comes into force in respect of each asset and liability to be transferred; and

1 (d) be signed by an authorised APRA officer.

2 (4) APRA must, in deciding when the certificate is to come into force  
3 in respect of each asset and liability to be transferred, take into  
4 account the wishes of the transferring body and the receiving body.

5 Note 1: For when the certificate comes into force, see section 36Q.

6 Note 2: APRA may impose a charge in respect of the issue of the certificate—  
7 see section 51 of the *Australian Prudential Regulation Authority Act*  
8 *1998*.

9 **36N Internal transfer certificates—notice of decision**

10 (1) If APRA issues an internal transfer certificate, it must give a copy  
11 of the certificate to each of the following:

- 12 (a) the transferring body;  
13 (b) the receiving body;  
14 (c) the operating body (unless the operating body is the  
15 transferring body or the receiving body);  
16 (d) the Minister.

17 (2) If APRA refuses to issue an internal transfer certificate applied for  
18 in the application for restructure approval, or decides to issue an  
19 internal transfer certificate in terms that are different from those  
20 applied for, it must give written notice to each person mentioned in  
21 subsection (1). The notice must include a statement of the reasons  
22 for the refusal, or for the decision.

23 **36P Internal transfer certificates—amendment**

- 24 (1) This section applies if:  
25 (a) the Minister has issued a restructure approval to an operating  
26 body; and  
27 (b) APRA has issued an internal transfer certificate for the  
28 purpose of giving effect to the restructure arrangement; and  
29 (b) the restructure instrument issued with the approval has not  
30 yet come into force (see section 36H).

31 *Application for amendment of certificate*

32 (2) The operating body may apply in writing to APRA for an  
33 amendment of the certificate.

- 1 (3) An application may be made only for the following amendments:  
2 (a) to change the nature (or amount) of the assets and liabilities  
3 to be transferred;  
4 (b) to change the identity of the receiving body;  
5 (c) to change the identity of the transferring body.

- 6 (4) The application must be in the form prescribed by the transfer  
7 rules, and must contain or be accompanied by the information  
8 required by the transfer rules.

9 Note: APRA may impose a charge in respect of the application—see  
10 section 51 of the *Australian Prudential Regulation Authority Act*  
11 *1998*.

12 *Decision to amend certificate*

- 13 (5) APRA may, in writing, amend the certificate if it is satisfied that:  
14 (a) the application has been made in accordance with  
15 subsections (2), (3) and (4); and  
16 (b) the amendment is appropriate for the purpose of giving effect  
17 to the restructure arrangement, having regard to the matters  
18 mentioned in paragraphs 36C(1)(b) and (c) (restructure  
19 approvals—issue).

20 *Notice of decision*

- 21 (6) If APRA amends a certificate under this section, it must give a  
22 copy of the amended certificate to each of the following:  
23 (a) the transferring body;  
24 (b) the receiving body;  
25 (c) if the amendment changes the identity of the receiving  
26 body—the former receiving body;  
27 (d) if the amendment changes the identity of the transferring  
28 body—the former transferring body;  
29 (e) the operating body (unless the operating body is a body  
30 mentioned above);  
31 (f) the Minister.
- 32 (7) If APRA refuses to amend a certificate, it must give written notice  
33 of the refusal to each person mentioned in subsection (6). The  
34 notice must include a statement of the reasons why the amendment  
35 was refused.

1 *If certificate previously amended*

- 2 (8) For the purposes of this section, a reference to a certificate includes  
3 a reference to the certificate as amended under a previous  
4 application of this section.

5 **36Q Internal transfer certificates—coming into force**

6 *Time for coming into force*

- 7 (1) An internal transfer certificate issued in accordance with a  
8 restructure approval comes into force, in respect of each asset and  
9 liability to be transferred:  
10 (a) at the time (the *restructure time*) the restructure instrument  
11 included in the approval comes into force (see section 36H);  
12 or  
13 (b) if the certificate states that it is to come into force (in any  
14 respect) after the restructure time—at the earlier of the  
15 following times:  
16 (i) the time stated in (or worked out under) the certificate  
17 for the asset or liability; or  
18 (ii) the time that is 12 months after the restructure time; or  
19 (c) at a time approved under this section.

20 *Satisfaction of restructure approval conditions*

- 21 (2) However, an internal transfer certificate comes into force, in  
22 respect of any particular asset or liability to be transferred, only if  
23 any conditions mentioned in paragraph 36E(1)(b) to which the  
24 restructure approval is subject have been satisfied in relation to the  
25 transfer of that asset or liability before the time mentioned in  
26 subsection (1) in relation to that asset or liability.

27 *Approval of a later time*

- 28 (3) On a written application by the transferring body and the receiving  
29 body, APRA may, in writing, approve a time later than the time  
30 worked out under subsection (1) for the internal transfer certificate  
31 to come into force in respect of any specified asset or liability, if  
32 APRA considers the variation appropriate.

- 1 (4) APRA cannot approve a time under subsection (3) for the internal  
2 transfer certificate to come into force (in any respect) that is later  
3 than the time that is 12 months after the restructure time.
- 4 (5) APRA must give a copy of the approval under subsection (3) to  
5 each of the following:  
6 (a) the transferring body;  
7 (b) the receiving body;  
8 (c) the operating body (unless the operating body is the  
9 transferring body or the receiving body);  
10 (d) the Minister.
- 11 (6) If APRA refuses an application under subsection (3), it must give  
12 written notice to each person mentioned in subsection (5). The  
13 notice must include a statement of the reasons why the application  
14 was refused.

15 **36R Internal transfer certificates—legal effect**

- 16 (1) When an internal transfer certificate comes into force in respect of  
17 a particular asset or liability, the receiving body becomes the  
18 successor in law of the transferring body, to the extent of the  
19 transfer.
- 20 (2) In particular:  
21 (a) the asset or liability, wherever it is located, becomes an asset  
22 or liability (as applicable) of the receiving body without any  
23 transfer, conveyance or assignment; and  
24 (b) to the extent of the transfer, the duties, obligations,  
25 immunities, rights and privileges applying to the transferring  
26 body apply to the receiving body.

27 **Division 5—Engagements of employees and contractors**

28 **36S Employment and contracts for services unaffected**

- 29 (1) This section applies to an individual who, immediately before the  
30 time when a restructure instrument comes into force in relation to  
31 an operating body, was:  
32 (a) employed by a body corporate (the *original body*) that is the  
33 operating body or any related body corporate; or

1 (b) engaged under a contract for services by a body corporate  
2 (the *original body*) that is the operating body or any related  
3 body corporate.

4 (2) If the individual was employed, the terms and conditions of  
5 employment (including any accrued entitlement to employment  
6 benefits) are not affected by the operation or effect of this Part.

7 (3) If the individual was engaged under a contract for services, the  
8 terms and conditions of the contract (including any accrued  
9 entitlement to benefits under the contract) are not affected by the  
10 operation or effect of this Part.

11 *Transfer of employment or contracts for services permitted*

12 (4) Despite subsections (2) and (3), this section is not taken to prevent  
13 an arrangement under which the individual would become  
14 employed, or engaged under a contract for services, by a body  
15 corporate that is related to the original body.

## 16 **15 At the end of section 45**

17 Add:

- 18 ; (i) a decision under section 36M:
- 19 (i) to refuse to issue an internal transfer certificate applied  
20 for in an application for a restructure approval; or
- 21 (ii) to issue an internal transfer certificate in terms that are  
22 different from those applied for in an application for a  
23 restructure approval;
- 24 (j) a decision under section 36P to refuse to amend an internal  
25 transfer certificate;
- 26 (k) a decision under subsection 36Q(3) to refuse to approve a  
27 later time for an internal transfer certificate to come into  
28 force.

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1  
2 **Schedule 2—Restructure relief: taxation**  
3 **aspects**  
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5 *Income Tax Assessment Act 1997*

6 **1 After section 124-380**

7 Insert:

8 **124-382 Special rules for ADI restructures**

- 9 (1) This section applies if:
- 10 (a) the interposed company is a non-operating holding company
  - 11 within the meaning of the *Financial Sector (Business*
  - 12 *Transfer and Group Restructure) Act 1999*; and
  - 13 (b) a restructure instrument under Part 4A of that Act is in force
  - 14 in relation to the interposed company; and
  - 15 (c) because of the restructure to which the instrument relates, an
  - 16 \*ADI becomes a subsidiary (within the meaning of that Act)
  - 17 of the interposed company; and
  - 18 (d) the original company is:
    - 19 (i) the ADI; or
    - 20 (ii) part of an extended licensed entity (within the meaning
    - 21 of the \*prudential standards) that includes the ADI.

22 *Certain preference shares disregarded*

- 23 (2) For the purposes of this Subdivision, disregard any \*shares in the
- 24 original company that can be disregarded under subsection
- 25 703-37(4).

26 *Certain foreign-owned shares disregarded*

- 27 (3) For the purposes of this Subdivision:
- 28 (a) disregard any \*shares in the original company covered by
  - 29 subsection (4); and
  - 30 (b) disregard any shares in the interposed company mentioned in
  - 31 paragraph (4)(d).
- 32 (4) This section covers \*shares in the original company if:

- 1 (a) the shares are owned by a foreign holder within the meaning  
2 of the *Corporations Act 2001*; and  
3 (b) an agent or nominee is appointed by (or on behalf of) the  
4 foreign holder; and  
5 (c) the shares are disposed of to the interposed company, or are  
6 cancelled; and  
7 (d) as a result, the agent or nominee acquires shares in the  
8 interposed company; and  
9 (e) the agent or nominee disposes of the shares in the interposed  
10 company (whether separately or together with other shares  
11 covered by paragraph (d)); and  
12 (f) the agent or nominee:  
13 (i) gives the foreign holder an amount equivalent to the  
14 \*capital proceeds of the disposal (less expenses); or  
15 (ii) if the shares are disposed of together with other shares  
16 covered by paragraph (d)—gives the foreign holder an  
17 amount equivalent to the foreign holder's proportion of  
18 the \*capital proceeds of the disposal (less expenses).

19 **2 At the end of Subdivision 202-C of Division 202**

20 Add:

21 **202-47 Distributions of certain ADI profits following restructure**

- 22 (1) This section applies to an amount paid by a body corporate if:  
23 (a) the body corporate is a non-operating holding company  
24 within the meaning of the *Financial Sector (Business  
25 Transfer and Group Restructure) Act 1999*; and  
26 (b) a restructure instrument under Part 4A of that Act is in force  
27 in relation to the body; and  
28 (c) because of the restructure to which the instrument relates, an  
29 \*ADI becomes a subsidiary (within the meaning of that Act)  
30 of the body; and  
31 (d) the amount is sourced, directly or indirectly, from the profits  
32 of the ADI before the restructure instrument came into force;  
33 and  
34 (e) the amount would have been a \*frankable distribution if it  
35 had been distributed by the ADI before the restructure  
36 instrument came into force.

- 1 (2) The amount:
- 2 (a) is taken to be a *dividend* paid by the body, for the purposes of
- 3 this Act (and so is a \*distribution by the body); and
- 4 (b) is not taken to be an \*unfrankable distribution by the body
- 5 just because of paragraph 202-45(e) (which makes
- 6 distributions from \*share capital accounts unfrankable).

7 **3 After section 703-35**

8 Insert:

9 **703-37 Disregarding certain preference shares following an ADI**

10 **restructure**

- 11 (1) The object of this section is to ensure that, following an \*ADI
- 12 restructure to which Part 4A of the *Financial Sector (Business*
- 13 *Transfer and Group Restructure) Act 1999* applies, a body
- 14 corporate is not prevented from being a \*subsidiary member of a
- 15 \*consolidated group or \*consolidatable group just because the body
- 16 (or another body corporate) has issued, or issues, certain preference
- 17 \*shares.
- 18 (2) This Part (except Division 719) operates as if a body corporate that
- 19 meets the requirement of subsection (3) at a particular time were a
- 20 \*wholly-owned subsidiary of another body corporate (the *holding*
- 21 *body*) at the time.
- 22 (3) The body corporate (the *preference-share issuing body*) must be
- 23 one that would be a \*wholly-owned subsidiary of the holding body
- 24 at the time if the \*shares in the preference share-issuing body that
- 25 are to be disregarded under subsection (4) did not exist.
- 26 (4) Disregard a \*share in the preference-share issuing body if:
- 27 (a) a restructure instrument under Part 4A of the *Financial*
- 28 *Sector (Business Transfer and Group Restructure) Act 1999*
- 29 is in force in relation to a non-operating holding company
- 30 within the meaning of that Act; and
- 31 (b) because of the restructure to which the instrument relates, an
- 32 \*ADI becomes a subsidiary (within the meaning of that Act)
- 33 of the non-operating holding company; and
- 34 (c) the preference share-issuing body is:
- 35 (i) the ADI; or

- 1 (ii) part of an extended licensed entity (within the meaning  
2 of the \*prudential standards) that includes the ADI; and  
3 (d) the shares are covered by subsection (5).
- 4 (5) A \*share is covered by this subsection if:  
5 (a) the share is a preference share; and  
6 (b) any \*return on the share is fixed at the time of issue by  
7 reference to the amount subscribed; and  
8 (c) the share is not a \*voting share; and  
9 (d) either:  
10 (i) the share is Tier 1 capital (within the meaning of the  
11 \*prudential standards); or  
12 (ii) the share would be Tier 1 capital (within the meaning of  
13 the prudential standards) were it not for a limit, imposed  
14 by those standards, on the proportion of Tier 1 capital  
15 that can be made up of such shares.
- 16 (6) Paragraph (5)(a) covers a preference share if it is issued:  
17 (a) by itself; or  
18 (b) in combination with one or more \*schemes that are \*related  
19 schemes in relation to a scheme under which a preference  
20 share is issued.
- 21 (7) If subsection (5) has covered a \*share, but would (apart from this  
22 subsection) stop covering the share from a particular time, then for  
23 a period of 180 days after that time the subsection is taken to  
24 continue to cover the share.

#### 25 4 Application

- 26 (1) The amendment made by item 1 of this Schedule applies in relation to  
27 CGT events happening on or after 1 July 2007.
- 28 (2) The amendments made by items 2 and 3 of this Schedule apply in  
29 relation to restructure instruments that come into force under the  
30 *Financial Sector (Business Transfer and Group Restructure) Act 1999*  
31 on or after 1 July 2007.

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## Schedule 3—Consequential amendments

### *Australian Prudential Regulatory Authority Act 1998*

#### **1 Subsection 3(1) (paragraph (f) of the definition of *prudential regulation framework law*)**

Repeal the paragraph, substitute:

(f) the *Financial Sector (Business Transfer and Group Restructure) Act 1999*;

### *Financial Sector (Transfers of Business) Act 1999*

#### **2 At the end of the title**

Add “, and to make provision in relation to internal restructures within some groups of financial institutions”

#### **3 Section 1**

Repeal the section, substitute:

##### **1 Short title**

This Act may be cited as the *Financial Sector (Business Transfer and Group Restructure) Act 1999*.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

#### **4 At the end of Section 8**

Add:

(7) Part 4A deals with proposals by ADI, general insurer or life insurance company groups to restructure the group (under Part 5.1 of the *Corporations Act 2001*).

Note: For an overview of Part 4A, see section 36A.

#### **5 Subsection 41(1)**

1 After “ADI,”, insert “or in relation to the restructure, or the possible  
2 restructure, of an ADI and one or more related bodies corporate,”.

3 **6 Subsection 41(2)**

4 After “life insurance company,”, insert “or in relation to the restructure,  
5 or the possible restructure, of a life insurance company and one or more  
6 related bodies corporate,”.

7 **7 At the end of section 41**

8 Add:

9 (3) For the purpose of deciding whether or how to perform or exercise  
10 functions or powers under this Act in relation to the restructure, or  
11 the possible restructure, of a general insurer and one or more  
12 related bodies corporate, each of the following provisions:

13 (a) section 115 of the *Insurance Act 1973*;

14 (b) any other provision of that Act, or of another Act, prescribed  
15 by the regulations;

16 has effect as if this Act were part of the Act that contains the  
17 provision.

18 **8 Subsection 43(4)**

19 After “under this Act,”, insert “or in relation to a restructure that takes  
20 effect or may take effect under this Act,”.

21 **9 Subsection 43(9)**

22 After “(whether voluntary or compulsory)”, insert “, or a transfer  
23 pursuant to an internal transfer certificate,”.

24 ***Income Tax Assessment Act 1997***

25 **10 Section 320-300**

26 Omit “*Financial Sector (Transfers of Business) Act 1999*”, substitute  
27 “*Financial Sector (Business Transfer and Group Restructure) Act*  
28 *1999*”.

29 **11 Paragraph 320-305(b)**

30 Omit “*Financial Sector (Transfers of Business) Act 1999*”, substitute  
31 “*Financial Sector (Business Transfer and Group Restructure) Act*  
32 *1999*”.

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**12 Subsection 703-30(2) (after paragraph (a) of the note)**

Insert:

- (aa) ownership of certain preference shares following an ADI restructure (see section 703-37); or

**13 At the end of section 705-85**

Add:

*Increase to cover ADI restructure preference share interests*

- (4) If any \*share in the joining entity needed to be disregarded under section 703-37 in order for the joining entity to be a \*wholly-owned subsidiary of the \*head company at the joining time, the step 2 amount worked out under section 705-70 is increased by the sum of the \*market values of those shares.

**14 Subsection 705-200(1)**

Omit “either of the following”, substitute “any of the following”.

**15 After paragraph 705-200(1)(b)**

Insert:

- (c) certain preference share interests in subsidiary members of the acquired group;

**16 Subsection 705-200(2)**

Omit “and (2)”, substitute “, (2) and (4)”.

**17 At the end of subsection 707-325(5)**

Add:

- ; or (c) in association with the acquisition of a \*share, in a body corporate, in relation to which the conditions in subsection 703-37(4) are met.

**18 Subsection 707-325(5) (note)**

Repeal the note, substitute:

Note 1: Section 703-35 of this Act and section 139CD of the *Income Tax Assessment Act 1936* deal with shares acquired under arrangements for employee shareholdings.

Note 2: Section 703-37 of this Act deals with certain preference shares following an ADI restructure.

1 **19 Section 709-80 (heading)**

2 Repeal the heading, substitute:

3 **709-80 Subsidiary member's distributions on employee shares and**  
4 **certain preference shares taken to be distributions by the**  
5 **head company**

6 **20 Paragraph 709-80(1)(c)**

7 After "subsection 703-35(4)", insert "or 703-37(4)".

8 **21 Subsection 709-80(1) (note)**

9 Repeal the note, substitute:

10 Note 1: Subsection 703-35(4) requires certain shares held under employee  
11 share schemes to be disregarded.

12 Note 2: Subsection 703-37(4) requires certain preference shares to be  
13 disregarded following an ADI restructure.

14 **22 After subsection 711-45(6)**

15 Insert:

16 *Increase to cover ADI restructure preference share interests*

17 (6A) If any \*share in the leaving entity needed to be disregarded under  
18 section 703-37 in order for the leaving entity to be a  
19 \*wholly-owned subsidiary of the \*head company at the leaving  
20 time, the step 4 amount is increased by the sum of the \*market  
21 values of those shares.

22 **23 Subsection 715-615(1)**

23 After "(about employee shares)", insert ", or section 703-37 (about ADI  
24 restructures),".

25 **24 Application**

26 The amendments made by items 10 to 23 of this Schedule apply in  
27 relation to restructure instruments that come into force under the  
28 *Financial Sector (Business Transfer and Group Restructure) Act 1999*  
29 on or after 1 July 2007.

30 ***Life Insurance Act 1995***

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1 **25 Subsection 190(5)**

2 Omit “*Financial Sector (Transfers of Business) Act 1999*”, substitute  
3 “*Financial Sector (Business Transfer and Group Restructure) Act*  
4 *1999*”.