



Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2007

Financial Sector (Business Transfer and Group Restructure) Act 1999

I, John Francis Laker, Chair of the Australian Prudential Regulation Authority, under subsection 46(1) of the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (“the Act”) and subsection 33(3) of the *Acts Interpretation Act 1901*:

1. AMEND Transfer Rules No. 1 of 2004, made on 30 November 2004 under subsection 46(1) of the Act, as set out in Part 1 of the Schedule; and
2. MAKE Transfer Rules No. 1 of 2007, as set out in Part 2 of the Schedule, for the purposes of subsections 36B(3) and 36P(4) of the Act.

Paragraphs 1 and 2 shall commence on the day this instrument is registered on the Federal Register of Legislative Instruments.

Dated: 29 August 2007

[signed]

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John Francis Laker
Chair
Australian Prudential Regulation Authority

Schedule

Part 1

The Transfer Rules No. 1 of 2004 are amended as follows:

omit

Financial Sector (Transfers of Business Act) 1999

wherever occurring, and

substitute

Financial Sector (Business Transfer and Group Restructure) Act 1999.

Part 2

Transfer Rules No. 1 of 2007

Introduction

1. These Rules are made under subsection 46(1) of the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (the Act). They apply to:
 - (a) an application made by an operating body under subsection 36B(2) of the Act for a restructure approval; and
 - (b) an application made by an operating body under subsection 36P(2) of the Act for an amendment to an internal transfer certificate.

Form and content of application for a restructure approval

2. For the purposes of subsection 36B(3) of the Act, an application for a restructure approval must be in the form prescribed, and contain the information required, by paragraph 3, subject to paragraph 4.

Note: A copy of the application must be provided to APRA in addition to the Minister (subsection 36B(4) of the Act).

3. An application by an operating body for a restructure approval must be in writing, signed by the CEO of the operating body, and contain or attach the following information, except where already provided to APRA in connection with a NOHC authorisation application:
 - (a) the reasons for the proposed restructure; and

- (b) the name and ACN or ARBN of the operating body and the proposed name and ACN or ARBN (where known) of the NOHC to be established; and
- (c) a chart of the group of companies and ownership chain of companies headed:
 - (i) at the time of application, by the operating body; and
 - (ii) post restructure, by the proposed NOHC; and
- (d) where it is proposed that particular assets and liabilities will be, or are likely to be, transferred by way of internal transfer certificate, a schedule describing the relevant transferring and receiving bodies (to the extent known); and
- (e) where it is proposed that particular assets and liabilities will be, or are likely to be, transferred other than by way of internal transfer certificate, a description of the manner by which such transfers are to be effected, together with a schedule describing the relevant bodies (to the extent known); and
- (f) a statement as to how the proposed restructure arrangement will:
 - (i) improve the operating body's ability to meet its prudential requirements; and
 - (ii) affect the interests of depositors or policy owners of the operating body, including any matters which may add to or detract from the safety and soundness of these interests. This must include:
 - (A) details of any proposed transfer of deposits or policies from the operating body or any other regulated member of the group headed by the NOHC; and
 - (B) to the extent known, particulars of the financial position of the operating body, both currently and projected upon completion of the restructure, including details of capital measures; and
 - (C) to the extent known, particulars of the projected financial position of the NOHC, and its consolidated group, upon completion of the restructure, including details of capital measures; and
 - (iii) affect the ability of APRA to supervise the operating body and to address risks to the operating body and other regulated members of the group headed by the NOHC; and
 - (iv) affect the interests of the financial sector as a whole (to the extent known); and

- (g) a description of the proposed restructure process, including, to the extent known:
 - (i) a list of required regulatory and court approvals, including the proposed timeframe for seeking such approvals and contingency plans should approvals not be obtained in timeframe proposed; and
 - (ii) the proposed timetable for establishing any new receiving entities within the group, including the NOHC; and
- (h) details, to the extent known, of the composition of the board and senior management of:
 - (i) the operating body, currently, and upon completion of, the restructure; and
 - (ii) the NOHC; and
 - (iii) any other prudentially regulated subsidiaries of the NOHC, both currently, and upon completion of the restructure; and
- (i) where the operating body, and proposed NOHC, are foreign owned, written advice from the home supervisor as to whether it consents to the establishment of the NOHC and the transfer of business proposed to be undertaken; and
- (j) if relief is to be sought in a restructure instrument under section 36G of the Act:
 - (i) the names of the entities to be covered by the restructure instrument; and
 - (ii) the nature of the relief sought; and
 - (iii) the reasons for seeking it; and
- (k) any other information that the Minister, in writing, specifies must be included in the application.

4. The Minister may:

- (a) waive a requirement for an operating body to provide particular information required by paragraph 3 where the Minister considers that the information is not necessary having regard to other information provided or the nature of the proposal; and
- (b) allow an operating body to supplement or vary information provided.

Form and content of application for amendment of an internal transfer certificate

5. For the purposes of subsection 36P(4) of the Act, an application for amendment of an internal transfer certificate must be in the form prescribed, and contain the information required, by paragraph 6, subject to paragraph 7.
6. An application by an operating body for the amendment of an internal transfer certificate must be in writing, signed by the CEO of the operating body, and specify:
 - (a) the requested change to be made to the internal transfer certificate; and
 - (b) the names of all transferring and receiving bodies party to the amended certificate; and
 - (c) the proposed date on which the transfers covered by the certificate are intended to take effect under the certificate as amended; and
 - (d) the impact, if any, of any delay on the nature and amount of assets or liabilities covered by the internal transfer certificate; and
 - (e) the reasons for the change; and
 - (f) any other information that APRA, in writing, specifies must be included in the application.
7. APRA may, in writing:
 - (a) waive a requirement for an operating body to provide particular information required under paragraph 6 where APRA considers that the information is not necessary having regard to other information provided or the nature of the proposal; and
 - (b) allow an operating body to supplement or vary information provided.

Interpretation

8. In these Transfer Rules:

ACN has the meaning in section 9 of the *Corporations Act 2001*.

ARBN has the meaning in section 9 of the *Corporations Act 2001*.

CEO means the Chief Executive Officer of the operating body and, if the body does not have a person with the title of CEO or Chief Executive Officer, means the most senior executive officer of the body for the time being, irrespective of his or her title, and whether or not he or she is a member of the governing body of the body.

NOHC authorisation application means an application by a body corporate to be a NOHC within the meaning of the Act;

the Act means the *Financial Sector (Business Transfer and Group Restructure) Act 1999*.