

EXPOSURE DRAFT



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Insurance Acquisitions and Takeovers (Public Interest) Determination 2023

I, Stephen Jones, Assistant Treasurer and Minister for Financial Services, make the following decision.

Dated 2023

Stephen Jones **[DRAFT ONLY—NOT FOR SIGNATURE]**

Assistant Treasurer

Minister for Financial Services

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Part 1—Preliminary

1 Name

This instrument is the *Insurance Acquisitions and Takeovers (Public Interest) Determination 2023*.

2 Commencement

- (1) Each provision of instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as Schedule 1 to the <i>Treasury Laws Amendment (Measures for Consultation) Act 2023</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the subsection 5(2) of the *Insurance Acquisitions and Takeovers Act 1991*.

4 Definitions

Note: Paragraph 13(1)(b) of the *Legislation Act 2003* has the effect that expressions have the same meaning in this instrument as in the *Insurance Acquisitions and Takeovers Act 1991* as in force from time to time.

In this instrument:

the Act means the *Insurance Acquisitions and Takeovers Act 1991*.

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Part 2 Public interest matters

Section 5

Part 2—Public interest matters

5 Fit and proper person

For the purposes of paragraph 5(2)(b) of the Act, in determining whether a particular matter is likely to result in a person who is not a fit and proper person to be in a position of influence over the Australian-registered insurance company being in such a position of influence as mentioned in paragraph 5(1)(b) of the Act, the Minister:

- (a) must have regard to:
 - (i) the honesty, integrity and reputation of the person; and
 - (ii) the competence and capability of the person, having regard to the degree of control or influence that the person will have over the Australian-registered insurance company; and
 - (iii) the financial soundness of the person; and
 - (iv) whether the person has any conflict of interest in regard to the matter that is likely to give rise to a material risk; and
 - (v) whether there are reasonable grounds for suspecting the person has committed, or is at risk of committing, a financial crime, including money laundering or terrorism financing; and
 - (vi) if the person is a company, the company's ability and willingness to comply with its prudential requirements; and
 - (vii) whether APRA's ability to effectively supervise the Australian-registered insurance company is likely to be negatively impacted; and
 - (viii) the potential for the person to be influenced by another person that is not a fit and proper person to be in a position of influence over the Australian-registered insurance company.
- (b) may have regard to any other matter that the Minister considers relevant.

6 Position of influence over a company

For the purposes of subsection 5(2)(b) of the Act, a person is taken to be in a position of influence over the Australian-registered insurance company as mentioned in paragraph 5(1)(b) of the Act if:

- (a) the person, either alone or together with one or more associates, is in a position to control 15% or more of the voting power in the company; or
- (b) one or more directors of the company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person acting alone or of the person acting together with one or more associates; or
- (c) the person has power, either acting alone or together with one or more associates, to appoint or remove a director of the company; or

- (d) the person is a director of the company; or
- (e) the person takes part in the management of the company.

7 Undue concentration of power

For the purposes of paragraph 5(2)(b) of the Act, in determining whether a particular matter is likely to unduly concentrate economic power in the Australia general insurance industry, the Australian life insurance industry or the Australian financial system as mentioned in paragraph 5(1)(c) of the Act, the Minister:

- (a) must have regard to whether the matter could adversely affect:
 - (i) the supply or pricing of insurance services to the Australian market;
or
 - (ii) the supply or pricing of other financial services to the Australian market.
- (b) may have regard to any other matter that the Minister considers relevant.

8 Contrary to the national interest

For the purposes of paragraph 5(2)(b) of the Act, in determining whether a particular matter is contrary to the national interest as mentioned in paragraph 5(1)(d) of the Act, the Minister:

- (a) must have regard to:
 - (i) whether the matter could adversely affect the stability and strength of the Australian general insurance industry, the Australian life insurance industry, or the Australian financial system; and
 - (ii) whether the matter could adversely affect the interests of policy holders of an Australian-registered insurance company; and
 - (iii) whether the matter is contrary to Australia's foreign investment policy.
- (b) may have regard to any other matter that the Minister considers relevant.