

# Hospital Foundations Act 2018

## Fact Sheet 3: Financial Transactions

*This document is intended for guidance purposes only and does not constitute legal advice. Hospital Foundations are strongly encouraged to seek independent advice to ensure compliance with the Hospital Foundations Act 2018.*

### Purpose

The *Hospital Foundations Act 2018* (**the Act**) provides a modern and streamlined approach to the establishment and regulation of hospital foundations.

This fact sheet provides general information to assist hospital foundations in understanding financial arrangements and obligations relevant to hospital foundations set out in the Act.

### Financial transactions requiring Ministerial approval

A foundation may apply, in writing, for the Minister's approval to enter into a *special financial arrangement* or *derivative transaction*. The Minister must consider the application and decide to approve or not approve the application.<sup>1</sup>

### Special financial arrangements

A special financial arrangement is an arrangement that is directed towards or includes:

- acquiring the whole or part of a business;
- entering into a joint venture or partnership;
- acquiring or issuing bonds, debentures, inscribed stock, shares, stock or other securities;
- acquiring foreign currency;
- funding a prize to a person or entity (e.g. Best Researcher) valued at more than \$5,000 or another amount prescribed regulation; or
- disposing of land, an interest in land or building.<sup>2</sup>

<sup>1</sup> *Hospital Foundations Act 2018* ss 53, 55, 56, 57, 59.

<sup>2</sup> *Hospital Foundations Act 2018* s 52.

## Derivative transactions

A derivative transaction is a transaction entered into for:

- managing or varying financial returns or financial or currency risks, including, for example, risks associated with the volatility of currency exchange, interest, and discount rates;
- returning gains, or avoiding losses, by reference to financial or currency obligations or the movement of currency exchange, interest and discount rates or commodity prices.<sup>3</sup>

These types of transactions can include forward agreements; future contracts for bills, bonds, commodities, shares and the share price index; options, whether traded or over the counter, and swaps, including, for example, commodity, consumer price index-linked, currency exchange, equity linked and interest rate swaps.

A foundation may only enter into a derivative transaction:

- with the approval of the Minister, and
- if the foundation does so to hedge against a risk to which the foundation is or will be exposed.<sup>4</sup>

Foundations are required to report to the Minister about the derivative transactions undertaken. The report must include the following:

- details sufficient to identify the derivative transaction;
- a statement about the underlying exposure against which the foundation is trying to hedge;
- the stated purpose of the derivative transaction, including details of the Minister's approval under which the transaction was entered into and verification of compliance with the conditions of the approval; and
- any realised or unrealised gains or losses from the derivative transaction.<sup>5</sup>

## General approvals for special financial arrangements or derivative transactions

The Minister may provide a general approval for foundations to enter into a special financial arrangement or derivative transaction.<sup>6</sup>

The approval may:

- apply generally to all foundations, special financial arrangements or derivative transactions; or
- be limited in its application to:
  - particular foundations, special financial arrangements or derivative transactions;
  - particular classes of special financial arrangements or derivative transactions; or

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<sup>3</sup> *Hospital Foundations Act 2018 s 52.*

<sup>5</sup> *Hospital Foundations Act 2018 s 55.*

<sup>4</sup> *Hospital Foundations Act 2018 s 54.*

<sup>6</sup> *Hospital Foundations Act 2018 s 56.*

- otherwise apply generally, or be limited in its application by reference to stated exceptions or factors.

The approval may also make different provision for different foundations, special financial arrangements, or derivative transactions. It may also be on conditions the Minister considers necessary or desirable. An approval applying to all foundations applies to any new foundation once it is established.

The Department of Health is required to publish general approvals on its website.<sup>7</sup>

## Specific approvals for special financial arrangements or derivative transactions

The Minister's approval for entering into a special arrangement or derivative transaction may be requested in writing by the foundation.<sup>8</sup> The Minister may request information or documents necessary to decide the application.

The Minister may:

- approve the application;
- decide not to approve the application;
- approve the application entirely or partly;
- approve the application with conditions considered necessary or desirable.<sup>9</sup>

In some situations, the Minister may deal with an application by giving a general approval for all foundations, or particular foundations.

A foundation is required to keep a register of the Minister's specific approvals in relation to a special financial arrangement and/or derivative transaction.<sup>10</sup>

## Amendment of approvals

An approval may be amended or repealed by the Minister, irrespective of whether a foundation applies for the amendment or repeal. The amendment or repeal of an approval does not affect its previous operation.<sup>11</sup>

## Applying for financial approval

A foundation must apply in writing for approval from the Minister to enter into a special financial arrangement or derivative transaction.<sup>12</sup> An approval may relate to a specific transaction (e.g. sale of land) or apply more generally (e.g. approval for all foundations to acquire shares up to a certain value).

To request approval from the Minister, a foundation must submit a business case to the department, which will obtain advice as required.

<sup>7</sup> *Hospital Foundations Act 2018* s 56(2).

<sup>8</sup> *Hospital Foundations Act 2018* s 57.

<sup>9</sup> *Hospital Foundations Act 2018* s 59.

<sup>10</sup> *Hospital Foundations Act 2018* s 62.

<sup>11</sup> *Hospital Foundations Act 2018* s 61.

<sup>12</sup> *Hospital Foundations Act 2018* s 57.

The business case should include, but not be limited to, the following details:

- how the proposed transaction aligns with the foundation's objectives;
- how the proposed transaction aligns with the foundation's overall investment strategy;
- risk assessment undertaken; and
- if only part of a business is being acquired, the level of control the foundation will exercise in relation to the business.

Consideration of the risk associated with the proposed transaction should always be documented including:

- What are the risks?
- What is the possibility of each of these risks occurring?
- What are the potential consequences for each of these risks if it occurs?
- What mitigating factors and controls are in place or will be put in place?

## Funds manager

A foundation may appoint a funds manager to manage all or part of its funds.<sup>13</sup> There is no requirement to obtain approval for this appointment.

A funds manager can only enter into a special financial arrangement or a derivative transaction for the foundation if there is an approval in place for that arrangement or transaction. A funds manager is not permitted to perform transactions outside the scope of services that the foundation has engaged the funds manager to perform.

## Other approvals under the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act)

### Borrowing and approval from Treasurer

A foundation requires Treasurer approval for transactions relating to borrowing. A foundation's ability to borrow is limited to the powers under Part 5 of the SBFA Act.

Foundations require approval under the SBFA Act to borrow and operate an overdraft facility on an account.<sup>14</sup>

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<sup>13</sup> *Hospital Foundations Act 2018* s 16.

<sup>14</sup> *Hospital Foundations Act 2018* s 17.

# Financial transactions that do not require approval

## Acquiring property

Ministerial approval is not required where property is acquired by the foundation by way of gift, devise or bequest.

## Acquisitions by way of gifts, devise or bequests

Approval is not required for acquisitions by way of gift, devise or bequest of:<sup>15</sup>

- whole or part of a business;
- bonds, debentures, inscribed stock, shares, stock or other securities; or
- foreign currency.

Approval is not required to dispose of land, an interest in land or a building, provided they were acquired by the foundation by way of a gift, devise or bequest.

## Property unfit for purpose or of insufficient value

Property vested in the foundation that is subject to a condition or trust can, without approval, be sold, exchanged or disposed of, if the foundation board considers the property:

- is unfit or not required for its purposes; or
- is of insufficient value.<sup>16</sup>

Property of insufficient value means property that is of no value, or, if sold by the foundation, would be unlikely to return sufficient proceeds of sale to cover the expenses the foundation would incur in selling the property.

Although approval is not required for the above, the proceeds of sale of property must be handled in accordance with the Act.

If the property is exchanged for other property, the property acquired must be held and managed in accordance with the objects of the foundation.

## More information

For more information contact the Office of Health Statutory Agencies, Department of Health, at [statutory.agencies@health.qld.gov.au](mailto:statutory.agencies@health.qld.gov.au).

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<sup>15</sup> Hospital Foundations Act 2018 s 53(2)(a).

<sup>16</sup> Hospital Foundations Act 2018 s 66.