



# Insurance Amendment Regulations 2008 (No. 1)<sup>1</sup>

## Select Legislative Instrument 2008 No. 125

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Insurance Act 1973* and the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007*.

Dated 19 June 2008

P. M. JEFFERY  
Governor-General

By His Excellency's Command

CHRIS BOWEN  
Assistant Treasurer

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**1 Name of Regulations**

These Regulations are the *Insurance Amendment Regulations 2008 (No. 1)*.

**2 Commencement**

These Regulations commence on 1 July 2008.

**3 Amendment of *Insurance Regulations 2002***

Schedule 1 amends the *Insurance Regulations 2002*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Before regulation 1**

*insert*

**Part 1 Preliminary**

**[2] Regulation 4, heading**

*substitute*

**4 Definitions**

**[3] Regulation 4, after definition of *Act***

*insert*

*unauthorised foreign insurer* means an insurer:

(a) that is either:

- (i) a body corporate incorporated in a foreign country;
- or

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- (ii) an unincorporated body established under a law of a foreign country that:
    - (A) under that law, may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose; and
    - (B) does not have its head office or principal place of business in Australia; and
  - (b) that immediately before 1 July 2008:
    - (i) was not, and was not required to be, authorised under the Act to carry on insurance business in Australia; and
    - (ii) was not exempt from subsection 9 (1), 10 (1) or 10 (2) of the Act by a determination made under subsection 7 (1) of the Act; and
  - (c) to which subsection 9 (1), 10 (1) or 10 (2) of the Act would apply if this Part did not apply to the insurer; and
  - (d) that is not an entity specified in regulation 12.

**[4] After regulation 4**

*insert*

**Part 2 Insurance contracts that are not insurance business**

**4A Application of Part 2**

This Part applies to a contract of insurance for which the insurer is, or is proposed to be, an unauthorised foreign insurer.

**4B Insurance contracts for high-value insured**

- (1) For subsection 3A (1) of the Act, a contract of insurance under which at least 1 of the policyholders is a high-value insured is specified.

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- (2) For subregulation (1) a policyholder is a **high-value insured** if the policyholder, alone or as part of a related group, meets the requirements of subregulation (3), (4) or (5).
- (3) A policyholder meets the requirements of this subregulation if the operating revenue of the policyholder derived in Australia for a financial year is at least \$200 million, worked out by averaging the amount of its operating revenue derived in Australia for each of the previous 3 financial years.
- (4) A policyholder meets the requirements of this subregulation if the value of its gross assets in Australia at the end of a financial year is at least \$200 million, worked out by averaging the value of those assets at the end of each of the previous 3 financial years.
- (5) A policyholder meets the requirements of this subregulation if the number of the employees of the policyholder in Australia at the end of a financial year is at least 500, worked out by averaging the number of its employees in Australia at the end of each of the previous 3 financial years.
- (6) If the policyholder was not in existence at the end of each of the previous 3 financial years, its revenue, assets and employees are worked out for the purposes of subregulations (3), (4) and (5) by reference to the most recent completed financial years in which it was in existence.
- (7) For this regulation:
- policyholder** means a person that has or proposes to have a contract of insurance with an unauthorised foreign insurer.
- related group** means:
- (a) 2 or more associated entities (within the meaning given by section 50AAA of the *Corporations Act 2001*); or
- (b) a partnership.

#### **4C Insurance contracts for atypical risks**

- (1) For subsection 3A (1) of the Act, a contract of insurance for an atypical risk is specified.

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- (2) For subregulation (1), a ***contract of insurance for an atypical risk*** is a contract of insurance under which any of the following is insured against:
- (a) loss or liability arising from the hazardous properties (including radioactive, toxic or explosive properties) of nuclear fuel, nuclear material or nuclear waste;
  - (b) loss or liability arising from the hazardous properties of biological material or biological waste;
  - (c) loss or liability arising from war or warlike activities (within the meaning given by subregulation 2 (1) of the *Insurance Contracts Regulations 1985*);
  - (d) loss or liability arising from a terrorist act (within the meaning given by section 5 of the *Terrorism Insurance Act 2003*);
  - (e) liability arising from health-care related research;
  - (f) loss of, or liability arising from the operation of, a space object (within the meaning given by section 8 of the *Space Activities Act 1998*);
  - (g) liability arising from the ownership or operation of an aircraft (but not loss of the aircraft or its cargo);
  - (h) liability and expenses arising from a person owning, chartering, managing, operating or being in possession of a vessel other than a pleasure craft (within the meaning given by subsection 9A (2) of the *Insurance Contracts Act 1984*);
  - (i) loss or liability arising from equine mortality or fertility and related risks;
  - (j) loss or liability incidental to a loss or liability mentioned in paragraphs (a) to (i).
- (3) However, a contract of insurance under which:
- (a) a loss or liability mentioned in subregulation (2); and
  - (b) a loss or liability of 1 or more other kinds;
- are insured against is only a contract of insurance for an atypical risk to the extent that it insures against the loss or liability mentioned in subregulation (2).
- (4) Also, an equestrian package is not a contract of insurance for an atypical risk.

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*Note* An equestrian package is an insurance policy that covers risks such as personal injuries and veterinary fees associated with the ownership or use of a horse and loss of or damage to saddlery, tack and horse floats.

#### **4D Insurance contracts for other risks that cannot reasonably be placed in Australia**

- (1) For subsection 3A (1) of the Act, a contract of insurance is specified if an Australian insurance broker certifies in writing that the risk insured under that contract cannot reasonably be placed with an Australian insurer.
- (2) In deciding whether the risk insured under that contract cannot reasonably be placed with an Australian insurer, the Australian insurance broker must be satisfied, on reasonable grounds, that:
  - (a) there is no Australian insurer that will insure against the risk; or
  - (b) the terms (including price) on which any Australian insurer will insure against the risk are substantially less favourable to the insured than the terms on which the unauthorised foreign insurer will insure against the risk; or
  - (c) insurance with an Australian insurer would be substantially less favourable to the insured than with an unauthorised foreign insurer because of other circumstances.

*Example for paragraph (c)*

The insured and the unauthorised foreign insurer have a pre-existing relationship, and the maintenance of that relationship will have significant benefits for the insured.

- (3) The Australian insurance broker must make reasonable inquiries about the matters mentioned in subregulation (2).
- (4) The Australian insurance broker must keep written records of:
  - (a) its inquiries into the matters mentioned in subregulation (2); and
  - (b) its reasons for being satisfied of those matters.
- (5) If requested by the insured, the Australian insurance broker must give a copy of the certificate under subregulation (1) to the insured.

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*Note* Failure by an Australian insurance broker to properly discharge the obligations in this regulation may be a matter affecting the financial services licence of that broker. See generally Part 7.6 of the *Corporations Act 2001*.

(6) In this regulation:

***Australian insurance broker*** means a person that holds an Australian financial services licence (within the meaning given by the *Corporations Act 2001*), and who is permitted under section 923B of that Act to assume or use the expression ***insurance broker*** or ***general insurance broker*** in relation to the person's business or services.

***Australian insurer*** means a person authorised or permitted under the Act (including by way of a determination under subsection 7 (1) of the Act) to carry on insurance business in Australia.

#### **4E Insurance contracts required by foreign laws**

For subsection 3A (1) of the Act, a contract of insurance is specified if a law of a foreign country requires that the contract be issued by an insurer, or a kind of insurer, authorised or permitted under the laws of that country to issue that kind of contract.

### **Part 3 Insurance business to which the Act does not apply**

**[5] Regulation 7**

*substitute*

**Part 4 Notice of commencement and  
cessation of insurance  
business**

**7 Notice of commencement and cessation of insurance  
business**

- (1) A body corporate authorised under the Act to carry on insurance business in Australia must tell APRA, in writing, of the date on which it started to carry on the business within 7 days after that date.

Penalty: 5 penalty units.

- (2) A body corporate authorised under the Act to carry on insurance business in Australia must tell APRA, in writing, of the date on which it ceases to carry on the business within 7 days after that date.

Penalty: 5 penalty units.

**Part 5 Inspection of Register and  
auditors' certificate**

**[6] Before regulation 11**

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**Part 6 Transitional**

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[7] **After regulation 11**

*insert*

**12 Transitional arrangements for entities seeking authorisation**

- (1) For subitem 7 (1) of Schedule 2 to the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007*, the following entities are specified for the period specified in subregulation (2):
- (a) an entity that:
- (i) is a body corporate; and
  - (ii) was carrying on insurance business before 1 July 2008; and
  - (iii) applied for an authorisation under subsection 12 (1) of the Act, and paid any fees associated with the application, before 1 July 2008;
- (b) a body corporate that is an associated entity (within the meaning given by section 50AAA of the *Corporations Act 2001*) of an entity described in paragraph (a).
- (2) For subregulation (1), the period starts on 1 July 2008 and ends on the earliest of:
- (a) if APRA authorises the entity mentioned in paragraph (1) (a) — the start of the day on which authorisation takes effect; and
  - (b) if APRA decides not to authorise the entity mentioned in paragraph (1) (a) — the start of the day on which APRA's decision takes effect; and
  - (c) the end of 31 December 2008.
- (3) For subparagraph (1) (a) (ii), *insurance business* has the meaning given in subsection 3 (1) of the Act as in force on and after 1 July 2008.

**[8] Schedule 2, after item 3**

*insert*

4. Insurance business carried on by an unauthorised foreign insurer relating to a contract of insurance that meets the following criteria:
  - (a) the contract was entered into before 1 July 2008;
  - (b) the contract has not been renewed or extended beyond its original term on or after 1 July 2008;
  - (c) the terms of the contract have not been varied on or after 1 July 2008.
  
5. Insurance business:
  - (a) that is carried on by an unauthorised foreign insurer that is an entity specified in subregulation 12 (1); and
  - (b) that relates to a contract of insurance that meets the following criteria:
    - (i) the contract was entered into before the end of the period under subregulation 12 (2) relating to the insurer;
    - (ii) the contract has not been renewed or extended beyond its original term after the end of that period;
    - (iii) the terms of the contract have not been varied after the end of that period.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.