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# insurance law alert

## Offshore insurers to be regulated in Australia

The Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Bill 2007 was passed by the Australian Parliament on 13 September 2007. On 20 September 2007, Treasury released: Regulation of Direct Offshore Foreign Insurers – Exemption Discussion Paper. It can be found on [www.treasury.gov.au](http://www.treasury.gov.au). APRA has previously released: Refinements to the General Insurance Prudential Framework on 31 July 2007. It can be found on [www.apra.gov.au](http://www.apra.gov.au).

### Overview of proposed reforms

The key changes to be introduced by the reforms in relation to direct offshore foreign insurers (DOFIs) are:

- the existing definition of 'insurance business' in the Insurance Act will be expanded and clarified with the result that more DOFIs will be caught and required to be authorised if they are to continue providing insurance in Australia;
- certain exemptions to the definition and therefore the requirement for authorisation will be promulgated; and
- offshore reinsurers will not be required to be authorised but may choose to be as an indirect result of prudential requirements with which domestic insurers must comply.

For further information, please see the September 2007 edition of our Financial Services bulletin on our website at: [www.ebsworth.com.au](http://www.ebsworth.com.au).

### Proposed three limb exemption

The Exemption Discussion Paper outlines a proposed three limb exemption: high value insureds, or atypical risks or customised exemption. To be a high value insured, a business will have to satisfy at least one of the following thresholds to be able to purchase insurance in Australia with an unauthorised DOFI:

- consolidated gross operating revenue of \$200 million;
- consolidated gross assets of \$200 million; or
- 300 employees.

Atypical risks include kidnap and ransom, asbestos and satellites. The customised exemption would be triggered where

an Australian business or consumer could not obtain insurance from an authorised insurer. Criteria will include factors such as: capacity, price, terms and continuity of existing relationship.

### Implications for the Australian general insurance market

The reforms have many implications for all parts of the Australian general insurance market. Insureds, Australian authorised insurers, DOFIs and intermediaries will all be interested in the proposed exemptions.

### DOFIs (including offshore captives)

DOFIs will need to consider whether their conduct falls within the newly expanded definition of insurance business and, if so, whether they can vary their business practices so they are not caught or whether an exemption will apply.

DOFIs and intermediaries should consider responding to the Exemption Discussion Paper if the proposed exemptions do not apply to their business and they believe they should or it is unclear whether an exemption applies to their business. The consultation period ends 31 October 2007.

DOFIs caught by the reforms should analyse the initial cost of applying for authorisation and the ongoing cost of complying with the prudential standards and consider making a submission to APRA in respect of the refined prudential standards outlined in the APRA discussion paper. The consultation period ends 28 September 2007.

Preparing for and applying for authorisation is a lengthy process so must be planned well in advance in order to comply with the 1 July 2008 start date.

## Intermediaries

Intermediaries should consider how the reforms will affect their ability to carry on their business, and may choose to respond to the Exemption Discussion Paper. Intermediaries should update their systems to identify authorised or exempt insurers to ensure that they do not breach the prohibition by dealing with an insurer that does not fulfil this criteria. If they intend to act as a corporate agent for an authorised branch, they will need to ensure that they meet the applicable requirements.

## Insureds

Insureds who insure with a DOFI and wish to continue this arrangement will need to consider whether they fall within an exemption, the DOFI will become authorised or they can arrange the insurance outside Australia.

## Authorised insurers

Authorised insurers should examine their reinsurance arrangements in light of the APRA discussion paper and evaluate the proposed exemptions.

## Reinsurers

Reinsurers will need to analyse the implications for their business of the proposed changes to investment risk charges on reinsurance recoverables and capital recognition of reinsurance recoverables older than 12 months (again in light of the APRA discussion paper and subsequent clarification).

## Next Steps

Ebsworth & Ebsworth can assist with responding to the:

- Exemption Discussion Paper – submissions are due by 31 October 2007; and
- APRA discussion paper – submissions are due by 28 September 2007.

For DOFIs that are required to become authorised, we can also assist with preparing and applying for authorisation with APRA.

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