

# Insurance Alert

May 2007

## ***Insurance Law Reform: Direct Offshore Foreign Insurers***

Direct offshore foreign insurers are foreign insurers who do not fall under the regulatory regime of the Australian Prudential Regulation Authority (APRA) and sell insurance to Australians either directly or via an Australian financial services licence holder, that is a general insurance agent or broker.

Currently DOFIs are not subject to the provisions of the Insurance Act 1973 (Clth) (Insurance Act) because they are not considered to be 'carrying on insurance business in Australia' for the purposes of the Act.

On 3 May 2007 the Minister for Revenue and Assistant Treasurer, Peter Dutton MP, announced reform measures designed to protect consumers and businesses from DOFIs that may behave unscrupulously or fail. The Minister announced that through amendment to the Insurance Act DOFIs will become subject to the same prudential rules as Australian insurers.

It is anticipated that as of 1 July 2008 DOFIs, will need to be authorised by (APRA) to carry on insurance business in Australia. APRA's existing enforcement powers will be enhanced to enable investigation of breaches and persons who breach the requirement to be authorised will be liable to prosecution.

The Insurance Act will thus apply to DOFIs including 'captive insurers'(who only insure the risks of their own corporate parent company or corporate group), foreign insurers and foreign reinsurers operating in Australia as APRA-authorized branches or subsidiaries, domestic insurers and domestic reinsurers. APRA does not intend to require foreign reinsurers to be authorised in Australia. The provisions of the Insurance Act dealing with the authorisation of Lloyd's underwriters to carry on insurance business in Australia will remain unchanged.

Additional exemptions will be available for specialised risk that cannot be underwritten in Australia to enable Australia's largest businesses and those unable to obtain appropriate cover to retain access to international insurance markets.

Concurrently APRA will modify its prudential regulatory framework. APRA intends to tailor prudential standards inline with the differing risk profiles of insurers. It is anticipated that categories of insurers with lower risk profiles will experience less extensive prudential requirements. Factors which will inform APRA of an insurer's risk profile include: customer base, home regulatory environment, ownership structure, reinsurance arrangements and type of business offered.

For further information please contact

Tim Hancock  
07 32236400  
thancock@qmtlaw.com.au