



## APPROVED FORM OF NOTIFICATION OF ADDRESS WHERE FINANCIAL / ACCOUNTING RECORDS ARE KEPT

ADIs, General Insurers and Life Companies

### Questions and Answers

#### 1. What are the amendments to the legislation and why is the approved form required to be completed?

Please refer to the following extract of the Explanatory Memorandum to the *Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010 (the Prudential Refinements Act)*:

The Insurance, Life Insurance, and Superannuation Industry (Supervision) Acts currently contain provisions with respect to the keeping of records by regulated entities. The Banking Act does not contain such provisions. Entities regulated under the Banking Act are, however, subject to the record keeping requirements in the Corporations Act.

The Bill makes amendments to the above-mentioned Acts to harmonise the record keeping provisions for APRA-regulated entities with respect to their accessibility by APRA. In particular, the amendments require that the records are kept in Australia; that APRA is notified, in the approved form, of their location and any change to that location within 28 days; and that the records are kept in English or in a form in which they are readily convertible into writing in English. Each of these requirements, with the exception of the requirement to notify APRA of the location at which records are kept, currently applies to some but not all APRA-regulated entities.

The Bill provides APRA with discretion to approve an entity keeping its records in a country other than Australia. This approval may be given subject to specified conditions and is reviewable on its merits by the Administrative Appeals Tribunal.

The Bill amends the Banking and Life Insurance Acts to make it an offence (penalty 200 penalty units) for a relevant entity to contravene the requirements to keep their records in Australia (or other approved country) and in English or in a form in which they are readily convertible into writing in English. In the case of the Insurance Act and the Superannuation Industry (Supervision) Act, the present offences in sections 49Q and 35A of those respective Acts apply.

To support the notification requirements referred to above, the Bill inserts a definition of 'approved form' into the Banking, Insurance and Life Insurance Act. The term is defined for relevant purposes to mean a form approved, in writing, by APRA. The term is already defined in the Superannuation Industry (Supervision) Acts.



**2. Which entities are required to complete the Approved form?**

**2.1 Does the requirement to complete the *Approved form for notification of address where financial / accounting records are kept* apply just to the regulated entity, or does it also capture authorised NOHCs?**

Authorised deposit-taking institutions, authorised general insurers and registered life companies are required to provide an address or addresses. Authorised NOHCs are not required to complete the approved form.

**2.2. Does the requirement to complete the *Approved form for notification of address where financial records are kept* apply to foreign ADI branches?**

No, a foreign ADI branch is not required to complete the approved form.

**2.3. Does the requirement to complete the *Approved form for notification of address where accounting records are kept* apply to foreign general insurers?**

Yes. Section 49Q of the *Insurance Act 1993* (the Insurance Act) applies to general insurers. A general insurer is defined in section 11 of the Insurance Act to include a foreign general insurer.

**2.4. Does the requirement to complete the *Approved form for notification of address where financial records are kept* apply to foreign Life companies?**

Yes, but only in relation to life insurance business conducted in Australia. The *Life Insurance Act 1995* (the Life Act) defines a life company to include an *eligible foreign life company*, as defined in section 16ZD of the Life Act. Section 16ZE provides that the Life Act does not apply in relation to life insurance business carried on outside Australia by an eligible foreign life insurance company.

**3. What financial/ accounting records does the requirement apply to?**

For authorised deposit-taking institutions, the requirement relates to ‘financial records’ required under section 286 of the Corporations Act.

Section 286 of the Corporations Act provides:

“(1) A company, registered scheme or disclosing entity must keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited.



*The obligation to keep financial records of transactions extends to transactions undertaken as trustee.*

*Period for which records must be retained*

*(2) The financial records must be retained for 7 years after the transactions covered by the records are completed.”*

Section 9 of the Corporations Act defines “*financial records*” to include:

*“(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and*

*(b) documents of prime entry; and*

*(c) working papers and other documents needed to explain:*

*(i) the methods by which financial statements are made up; and*

*(ii) adjustments to be made in preparing financial statements.”*

For registered life companies, the financial records required include those that a life company is required to keep under section 75 or 76 of the Life Act and those required under section 286 of the Corporations Act.

For general insurers, the requirement relates to ‘accounting records’ as defined in section 3 of the Insurance Act (see below).

Accounting records are as defined in the Insurance Act:

*“**accounting records**”, in relation to a body corporate, includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the body corporate are made up, and such other documents (if any) as are prescribed.*

The definition of accounting records in the Insurance Act does not exclude the requirement for a body corporate to comply with section 286 of the Corporations Act (see section 102 of the Insurance Act).

Records relating to subsidiaries or branches will only be relevant if the records are necessary to explain the transactions and financial position and performance (within the meaning of s286 of the Corporations Act) of the APRA-regulated entity and, in the case of a general insurer, to explain the methods and calculations by which accounts of the general insurer are made up.

**It is the regulated entity’s responsibility to determine the scope of its records which fall within the statutory definitions for compliance purposes and to seek professional advice where appropriate.**



#### 4. What address or addresses must be notified?

APRA will regard records as being ‘kept’ for the purposes of the approved form, where the required records are **readily accessible**. That is, the records can be accessed within a time frame of no more than 24 hours.

This means that if all of the required records are readily accessible at one location in Australia, only the address of that location is required to be notified in the approved form.

If only some of the required records are ‘kept’ at one location and the remaining required records are ‘kept’ at one or more other locations, then the address of all of those locations should be notified.

Where some of the required records are in storage and are readily accessible only at an outsourced service provider of storage facilities, then the principal address for the outsourced service provider should also be notified.

Where an entity has offshoring arrangements in place which may involve the location of required records overseas (either in hard copy or electronically), then provided all the required records are readily accessible from one central location in Australia, (or if not at one central location, at more than one location in Australia), then only the address or addresses where the records are readily accessible in Australia need be notified.

Where any part of the required records are only readily accessible at an overseas location, approval should be sought from APRA (see **FAQ 5** below).

As part of compliance with the prudential standards on Outsourcing and Business Continuity Management, APRA notes that entities are required to have appropriate contractual and risk management arrangements in place to mitigate risks including access risk and related risks such as counterparty risk.

APRA also notes in the context of required records which are kept outside Australia, that subsection 289(2) of the Corporations Act provides:

*(2) If financial records about particular matters are kept outside this jurisdiction, sufficient written information about those matters must be kept in this jurisdiction to enable true and fair financial statements to be prepared. The company, registered scheme or disclosing entity must give ASIC written notice in the prescribed form of the place where the information is kept.*

#### 5. Where required financial records are, or are proposed to be, kept outside Australia, how should regulated entities apply for APRA’s approval?

Approval will be required where the required records are not readily accessible in Australia. Applications for approval to keep the required records outside Australia should be in writing and sent to APRA for the attention of the regulated entity’s supervisor. The application should provide sufficient detail to permit APRA to make an assessment, including but not limited to the following:

- type of records;



- whether the records are kept in hard copy or electronically;
- the relevant address or addresses where the records can be accessed and the form in which the records can be accessed;
- the details of the regulated entity's contractual arrangements with the holder of the records which entitle the regulated entity to access those records; and
- the details of the entity's relevant risk management and business continuity policies and procedures which address relevant risks such as access and counterparty risk.

**6. Who is an Authorised Officer?**

An Authorised Officer refers to a person/s which the regulated entity has authorised to provide APRA with the required information. APRA would expect this person to be someone of appropriate seniority in the organisation with relevant knowledge of and responsibility for the location of the required records, for example the CFO or CIO or their delegate.

**7. What is required if the notified address or addresses change?**

The legislation requires that APRA be notified, in the approved form and within 28 days, of a change in address where the required records are kept.

**8. When should the section *'If this is a new address since the last notification state 'Yes'...*' be completed?**

This section should be completed only on subsequent submissions of this form when an updated address is provided. There is no need to complete this section the first time the form is submitted.

**9. Does the form capture current financial / accounting records only?**

Regulated entities should submit addresses related to financial / accounting records for the last 7 years as required by section 286 of the Corporations Act.