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Deputy Chairman

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To all general insurers and Lloyd's of Australia

Response to submissions: consultation on Assets in Australia requirements for general insurers

Background

APRA released a letter to all general insurers and Lloyd's of Australia on 2 October 2014 relating to a consultation on the 'assets in Australia' requirements of the *Insurance Act 1973* (the Act).

The letter outlined APRA's view on payment and intermediary clauses contained in reinsurance contracts and the importance of ensuring that the wording of those clauses complies with paragraph 116A(1)(c)¹ of the Act. The letter also outlined APRA's proposal to make a determination under section 7 of the Act that would treat certain reinsurance recoverables as assets in Australia for the purposes of paragraph 28(a) of the Act. The letter invited feedback from general insurers on these views and APRA's proposal to issue a determination under the Act.

The letter also noted that general insurers are responsible for ensuring compliance with the Act at all times. Paragraph 28(a) of the Act states that a general insurer commits an offence if it does not hold assets in Australia (excluding goodwill and any assets or other amounts excluded by *Prudential Standard GPS 120 Assets in Australia*²) of a value that is equal to or greater than the total amount of the general insurer's liabilities in Australia (other than its pre-authorisation liabilities).³

The letter was released to all authorised general insurers and Lloyd's of Australia on a confidential basis to provide general insurers with an opportunity to consider the issues raised in the letter and respond prior to APRA finalising and publicly releasing its position.

This response letter addresses the submissions received by APRA and outlines the next steps regarding this consultation. The consultation package sent to general insurers is now available on APRA's website.⁴

¹ This paragraph states that: '... under the terms of the contract, payments by way of reinsurance are to be made in Australia.'

² This excludes debts owed that are: payable outside Australia; or not recoverables in an Australian court; or the debtor does not reside in Australia.

³ The only exception is where APRA has authorised a general insurer under paragraph 28(b) of the Act to hold a lesser amount of assets or APRA has made a determination under section 7 of the Act that section 28 does not apply to the general insurer.

⁴ The initial consultation letter is located here:

<http://www.apra.gov.au/GI/PrudentialFramework/Pages/assets-in-australia-June-2015.aspx>

Submissions

APRA received four submissions in response to the consultation letter. Submissions generally acknowledged APRA's views regarding when payment and intermediary clauses would be compliant with paragraph 116A(1)(c) of the Act.

Some submissions stated that steps had been, or were being taken, to ensure wording in reinsurance contracts comply with the Act, or that the general insurer was satisfied that their reinsurance contract wording complied with the Act. Other submissions stated that the position regarding the views expressed by APRA has been reviewed and any reinsurance recoverables where the underlying reinsurance contracts did not contain the wording required to satisfy paragraph 116A(1)(c) of the Act would no longer be recognised as assets in Australia.

Some submissions argued that change to the law would be appropriate to facilitate greater efficiency in the administration of group-wide reinsurance contracts. APRA is open to considering specific arrangements in discussion with insurers on a case-by-case basis but such arrangements must comply with the requirements of the Act.

APRA stated in the consultation letter that the onus is on general insurers to ensure they are compliant with the Act at all times, including paragraph 116A(1)(c) of the Act such that payments by way of reinsurance are made in Australia. General insurers that have questions as to their position in relation to the assets in Australia requirements of the Act, both now and in the future, are encouraged to contact their responsible supervisor.

Reinsurance recoverables from Lloyd's or supported by collateral

APRA stated in the consultation letter that it was of the view that reinsurance recoverables from Lloyd's underwriters, or supported by collateral⁵, should be treated as assets in Australia.

APRA proposed to make a determination under section 7 of the Act that would treat:

- all reinsurance recoverables from Lloyd's underwriters that are required to be supported by security trust funds in Australia; and
- reinsurance recoverables from non-APRA-authorized reinsurers that are supported by collateral in Australia;

as if such assets were assets in Australia for the purposes of paragraph 28(a).

Submissions received by APRA were supportive of this proposal. APRA has made the proposed determination under section 7 of the Act, such that the reinsurance recoverables listed above will be considered as assets in Australia from 1 July 2015.

⁵ For the purposes of this letter, collateral refer to collateral, guarantees and letters of credit that meet the relevant requirements of *Prudential Standard GPS 114 Capital Adequacy: Asset Risk Charge*.

Next steps

At this stage, APRA does not intend to issue any additional guidance on the wording of reinsurance contracts relating to assets in Australia requirements of the Act. APRA reiterates that the onus is on general insurers to ensure compliance with the Act at all times. If general insurers have questions regarding their compliance with the Act, they should contact their APRA responsible supervisor.

Any questions regarding the contents of this letter or the previously released consultation letter can be directed to: insurance.policy@apra.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'L. J. ...', is positioned on the left side of the page.