

Proposed Data Collection Requirements for General Insurance Intermediaries

In a nutshell

Significant new data collection and reporting requirements have been proposed that will affect certain general insurance intermediaries that are Australian Financial Services Licence holders (licensees).

These requirements relate not only to general insurance entered into by unauthorised foreign insurers (UFIs) but to authorised insurers as well.

The proposed timetable (data collection is to start from November) is clearly impractical given the scope of information covered and the systems changes required. Submissions on the Consultation Paper are due 8 October 2009.

It is anticipated that strong industry opposition to the requirements will inject a much-needed element of realism and should result in significant changes being made to the proposals.

Rationale for the proposal

The proposal is contained in a Federal Treasury Consultation Paper and an exposure draft of *Corporations Amendment Regulations 2009* (Cth) released in September.

The objectives of the proposed requirements are twofold:

- to monitor the use of limited UFI exemption arrangements and assist in the modification of those arrangements over time.

Recent changes to the *Insurance Act* resulted in a broadening of those required to be authorised. An insurance business can only be carried on in Australia by APRA-authorized general insurers, Lloyd's underwriters and UFIs issuing general insurance contracts within the new limited exemption arrangements. The limited exemption arrangements which may apply to general insurance contracts issued by UFIs are comprised of:

- high-value insured exemptions;
- atypical risk exemptions;
- customised exemptions; and
- foreign law exemptions.

At the time of introducing the changes to the *Insurance Act* and the new exemptions, the Government proposed that licensees would be required to provide data to monitor the ongoing appropriateness of the exemptions;

- to gain a better understanding of the Australian insurance market by obtaining data on the intermediation of general insurance products.

Unlike the first objective, this is a new proposal and significantly increases the burden on licensees. The rationale for its inclusion is its "heightened importance in the context of recent financial market turmoil. Data on the intermediation of general insurance will enable, for example, a greater understanding of the impact of insurer failure on the Australian community".

Which general insurance intermediaries are caught?

The following licensees authorised to deal in general insurance products will be caught (those only authorised to provide advice will not be caught):

- general insurance brokers
- general insurance underwriting agents
- APRA-authorized general insurers acting as intermediaries for other insurers. They won't be required to provide data on general insurance products they issue themselves because APRA-authorized general insurers are already required to provide APRA with such information. How APRA will reconcile this information and the intermediary data collected will be interesting as there are differences between the two.

It is interesting to note that there are insurance intermediaries in the market that don't require a licence and won't be caught. How this will affect the validity of the information will be interesting.

To avoid doubling-up where there are two or more licensed intermediaries dealing with the same policy, only the intermediary dealing directly with the insurer must report e.g. if a broker places business with Lloyd's underwriters through a Lloyd's coverholder the coverholder needs to report.

When will the requirements commence and what are the reporting periods?

If the proposed regulations are passed in their present form, the first formal collection of data will cover the period 1 November 2009 to 31 December 2009 and the data must be submitted by 26 February 2010.

The Consultation Paper states that systems will need to be in place by 1 November 2009 to collect and manage the data. There are few intermediaries that could reasonably adhere to such a timetable and it is hoped that reason will prevail and that the timetable will be changed.

The second data period will be the six-month period from 1 January 2010 to 31 June 2010. Each data period thereafter will be a six-month period starting on every 1 July and 1 January.

1 Personal Liability for Corporate Fault, report by Corporations and Market Advisory Committee, September 2006

2 Section 48 of the NGER Act

Data after the first formal collection must be submitted to APRA within 20 business days of the end of the reporting period unless otherwise specified by ASIC or APRA.

Although not a strict requirement, intermediaries will also be asked to provide any available data covering the period 1 July 2009 to 31 October 2009 on a "best endeavour" basis.

What are the data collection requirements?

There are two forms of data collection obligations.

Form 1 aggregate data only covers business with APRA-authorized general insurers, Lloyd's underwriters and UFI's where the business falls within certain APRA classes of business. Those classes are homeowners/householders, commercial motor vehicle, domestic motor vehicle, travel, fire and ISR, marine, aviation, mortgage, consumer credit, other accident, other CTP motor vehicle, public and product liability, professional indemnity and employers' liability.

Data as to the total premium for all policies in each APRA class of business, and the total number of policies in that class, needs to be given.

Form 1 can be submitted either in paper form or electronically using APRA's D2A system.

Form 2 data is at the transaction level and only covers business relating to UFI's (except in the case of atypical risks where information

on all insurers is required). For each of these types of transactions, a variety of data must be given, including details of the APRA class of business, the layer arrangements and the amount of premium.

Form 2 data can only be submitted electronically using APRA's D2A system.

Only contracts entered into during the relevant period need to be reported.

Reinsurance and retrocession arrangements are not caught.

Concerns with the extent of the information required, its usefulness and certain definitions (e.g. what is premium?) are being raised.

APRA, in collecting the data, is not acting in its prudential regulator capacity. Instead it collects it as agent for ASIC in its role as the national statistical agency for the Australian financial sector. Information collected will be kept confidential.

There is no audit requirement imposed on intermediaries in relation to the data but they must have adequate risk management systems to ensure the data is sufficiently complete, reliable and verifiable.

APRA will of course assess the data for validity and can request further information from an intermediary if any issue is identified.

A failure to comply constitutes a breach of the licensee's obligations for which ASIC has various remedies and a failure to provide the data is a strict liability offence with maximum penalties for each offence of \$1,100 for an individual and \$5,500 for a corporation.

Publication of Data

APRA will publish key data in aggregate every six months covering amongst other things:

- insurance premium by APRA class;
- intermediated insurance business by APRA class;
- each of the relevant UFI exemptions; and
- geographic distribution of UFIs.

Discretionary mutual funds (DMFs)

Currently, data relating to DMFs are being collected under the *Financial Sector (Collection of Data) Act 2001* (Cth). It was originally proposed that data on dealings in DMFs would be collected under the proposed regulations. However, this proposal has been abandoned because it would largely duplicate what is already being collected by APRA.

Instead, licensees authorised to deal in "miscellaneous financial risk products" will be required to provide information about DMFs with which they have dealt. The DMF details will be passed on to APRA, which will then be able to obtain data from any previously unidentified DMFs under the *Financial Sector (Collection of Data) Act 2001* (Cth).

Mark Radford
Partner

T: 02 8281 4442
E: mar@cbp.com.au