



Corporations Amendment Regulations 2008 (No.)¹

Select Legislative Instrument 2008 No.

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 2008

Governor-General

By His Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]

Assistant Treasurer

DRAFT ONLY

1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2008 (No.)*.

2 Commencement

These Regulations commence on 1 July 2008.

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

Schedule 1 Amendments

(regulation 3)

[1] After regulation 7.8.25

insert

7.8.26 Information to be provided by financial services licensees — business placed with unauthorised offshore insurers

- (1) This regulation applies to a financial services licensee who provides a financial service to a person that results in the person entering into an exempt offshore insurance contract with an unauthorised foreign insurer.
- (2) However, if:
 - (a) this regulation would apply to 2 or more financial services licensees in relation to the same contract; and
 - (b) at least 1 of those licensees is an insurance broker;
this regulation applies only to:
 - (c) if there is only 1 insurance broker to which this regulation would apply — the insurance broker; or

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- (d) otherwise — the insurance broker that dealt directly with the insured under the contract.
- (3) For section 912CA of the Act, the financial services licensee must, within the period mentioned in subregulation (4), provide the following information to ASIC in the manner approved by ASIC for this regulation:
- (a) the provision of Part 2 of the *Insurance Regulations 2002* that applies to the contract;
 - (b) the kind of loss or liability insured under the contract;
 - (c) the premium payable under the contract;
 - (d) the name and country of domicile of the unauthorised foreign insurer.

Penalty: 10 penalty units.

Note for paragraph (b) Kinds of loss or liability include the classes of insurance business under “Specific Instructions” in the *Financial Sector (Collection of Data) (reporting standard) determination No. 82 of 2006*, and the kinds set out in subregulation 4D (2) of the *Insurance Regulations 2002*.

- (4) The period is:
- (a) if the contract is entered into in the period of 6 months beginning on 1 January in a year — within 20 business days after 30 June in that year; and
 - (b) if the contract is entered into in the period of 6 months beginning on 1 July in a year — within 20 business days after 31 December in that year.

- (5) In this regulation:

unauthorised foreign insurer has the meaning given by regulation 4A of the *Insurance Regulations 2002*.

exempt offshore insurance contract means an insurance contract to which Part 2 of the *Insurance Regulations 2002* applies.

insurance broker means a person that is permitted under section 923B of the Act to assume or use the expression ***insurance broker*** or ***general insurance broker*** in relation to the person’s business or services.

7.8.27 Information to be provided by financial services licensees — business placed with discretionary mutual funds

- (1) This regulation applies to a financial services licensee who provides a financial service to a person (*contributor*) that results in the contributor contributing to a discretionary mutual fund.
- (2) However, if:
 - (a) this regulation would apply to 2 or more financial services licensees in relation to the same fund; and
 - (b) at least 1 of those licensees is an insurance broker;
this regulation applies only to:
 - (c) if there is only 1 insurance broker to which this regulation would apply — the insurance broker; or
 - (d) otherwise — the insurance broker that dealt directly with the contributor.
- (3) For section 912CA of the Act, the financial services licensee must, within the period mentioned in subregulation (4), provide the following information to ASIC in the manner approved by ASIC for this regulation:
 - (a) the kind of liability, loss, damage or expense for which payments may be made out of the fund;
 - (b) the contributions made to the fund;
 - (c) the name and country of domicile of the fund.

Penalty: 10 penalty units.

Note for paragraph (a) Kinds of liability, loss, damage or expense include the classes of business in Appendix 1 to the Instruction Guide for Reporting Form DRF 310.3 in the *Financial Sector (Collection of Data) (reporting standard) determination No. 39 of 2007*.

- (4) The period is:
 - (a) if the first contribution to the fund is made in the period of 6 months beginning on 1 January in a year — within 20 business days after 30 June of that year; and
 - (b) if the first contribution to the fund is made in the period of 6 months beginning on 1 July in a year — within 20 business days after 31 December of that year.

(5) In this regulation:

discretionary mutual fund has the meaning given by subsections 5 (5) and (6) of the *Financial Sector (Collection of Data) Act 2001*.

insurance broker means a person that is permitted under section 923B of the Act to assume or use the expression *insurance broker* or *general insurance broker* in relation to the person's business or services.

[2] **After regulation 7.7.20**

insert

7.7.20A Extension of disclosure requirements to wholesale clients dealing with certain unauthorised insurers

- (1) For paragraph 949B (1) (e) of the Act, a person must give a wholesale client the information set out in subregulation (3) for a financial service provided by that person to the wholesale client if:
- (a) the service relates to an insurance contract specified in regulation 4D or 4E of the *Insurance Regulations 2002* which may be offered or issued by an unauthorised foreign insurer (within the meaning of those Regulations) (the *insurer*); and
 - (b) either:
 - (i) the person would be required to give a Statement of Advice if the service was provided to a retail client; or
 - (ii) the contract is offered or issued to the wholesale client.
- (2) For paragraph 949B (1) (e) of the Act, a person must give a wholesale client the information set out in subregulation (3) for a financial service provided by that person to the wholesale client if:
- (a) the service relates to the wholesale client dealing with an entity (the *insurer*) specified in regulation 12 of the *Insurance Regulations 2002*; and
 - (b) either:

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- (i) the person would be required to give a Statement of Advice if the service was provided to a retail client; or
 - (ii) the insurer offers or issues a financial product to the wholesale client.
- (3) The information is:
- (a) a statement that the insurer is not authorised under the *Insurance Act 1973* to conduct insurance business in Australia; and
 - (b) a statement that the insurer is not subject to the provisions of the *Insurance Act 1973*, which establishes a system of financial supervision of general insurers in Australia; and
 - (c) a statement that the wholesale client should consider whether to obtain further information, including:
 - (i) the country in which the insurer is incorporated, and whether the country has a system of financial supervision of insurers; and
 - (ii) the paid up capital of the insurer; and
 - (iii) which country's laws will determine disputes in relation to the financial product.

[3] After Part 7.9, Division 2B

insert

Division 2BA Product Disclosure Statement for discretionary mutual funds

7.9.07CA Extension of Product Disclosure Statement requirements to wholesale clients

- (1) For paragraph 949B (1) (e) of the Act, a regulated person must give a wholesale client a Product Disclosure Statement or a Supplementary Product Disclosure Statement for a financial product if:

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- (a) the financial product is offered or issued by a discretionary mutual fund (within the meaning given by subsections 5 (5) and (6) of the *Financial Sector (Collection of Data) Act 2001*); and
 - (b) the regulated person would be required to give the Statement if the product were offered or issued to a retail client.
- (2) The Product Disclosure Statement or Supplementary Product Disclosure Statement required to be given under this regulation must be the same as that which would be given to a retail client.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.