

# Life Insurance Amendment Regulations 2004 (No. 1) 2004 No. 317

## EXPLANATORY STATEMENT

Statutory Rules 2004 No. 317

Issued by the Treasurer

*Life Insurance Act 1995*

*Life Insurance Amendment Regulations 2004 (No. 1)*

Subsection 253(1) of the *Life Insurance Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, other than matters required or permitted to be prescribed by Prudential Rules or actuarial standards, or prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *US Free Trade Agreement Implementation Act 2004* (the USFTA Act) consists of ten schedules that amend the relevant Australian legislation to fulfil Australia's obligations under the Australia-United States Free Trade Agreement (AUSFTA). Schedule 4 to the USFTA Act amends the Act to fulfil obligations under Chapter 13 of the AUSFTA, which allow foreign life insurers to establish branches in Australia to conduct life insurance business. Currently, only insurers incorporated in Australia can conduct life insurance business in Australia.

The purpose of the Regulations is to amend the provisions of the *Life Insurance Regulations 1995* (the Principal Regulations) to:

- specify the countries that foreign life insurers must be incorporated and regulated in to be eligible to establish a branch in Australia; and
- make other structural changes to accommodate branches of foreign life insurance companies in the regulatory regime.

The Regulations also clarify certain restrictions on the investment, by life insurance companies, of assets of statutory funds. These provisions are not directly related to the implementation of USFTA obligations, but address concerns raised by the Australian Prudential Regulation Authority that branches of foreign life insurers may be confused over the meaning of the term 'assets in a statutory fund'.

The Act does not impose any conditions that need to be met before the power to make the proposed Regulations may be exercised.

Details of the Regulations are provided in the [Attachment](#).

The Regulations commence on the commencement of Schedule 4 to the USFTA Act. That Schedule is expressed to commence on the later of 1 January 2005 or the day on which the AUSFTA comes into force for Australia.

Subsections 4(1) and (2A) of the *Acts Interpretation Act 1901*, read together, allow the making of regulations between the passing and commencement of legislation upon which they rely for their authority, as long as such regulations do not commence before the legislation.

## **ATTACHMENT**

### **DETAILS OF THE *LIFE INSURANCE AMENDMENT REGULATIONS 2004 (NO. 1)***

#### **Regulation 1: Name of Regulations**

Regulation 1 specifies that the Regulations are the *Life Insurance Amendment Regulations 2004 (No. 1)*.

#### **Regulation 2: Commencement**

Regulation 2 establishes that the Regulations commence on the commencement of Schedule 4 to the *US Free Trade Agreement Implementation Act 2004* (USFTA Act). That Schedule is expressed to commence on the later of 1 January 2005 or the day on which the Australia-United States Free Trade Agreement (AUSFTA) comes into force for Australia.

#### **Regulation 3: Amendment of Life Insurance Regulations 1995**

Regulation 3 establishes that Schedule 1 amends the *Life Insurance Regulations 1995* (the Principal Regulations).

### **SCHEDULE 1: AMENDMENTS**

#### **Item 1: List of countries**

The amendments to the *Life Insurance Act 1995* (the Act) resulting from the USFTA Act allow the Government to specify in the regulations the countries that foreign life insurers must be incorporated and regulated in to be eligible to establish a branch in Australia. Item 1 inserts a new Part 2B, which would specify the United States of America for this purpose.

#### **Item 2: Statutory funds**

Paragraph 43(3)(d) of the Act states that a life company must not invest assets of a statutory fund, or keep such assets invested, in a subsidiary of a life company if the investment, or the retention of the investment, is prohibited by the regulations. The amendment to regulation 4.01A seeks to achieve greater clarity on this issue. If branches are to be established in Australia, greater potential exists for there to be confusion over the meaning of the term 'assets in a statutory fund'. The amendment gives the Australian Prudential Regulation Authority (APRA) discretion to determine on a case by case basis whether an investment by a life insurer that has a branch in Australia is consistent with the intent of the legislation.

Item 2 rewords the regulation but this change does not affect the investment decisions of existing life insurers in Australia.

#### **Items 3, 4 and 5: Register of life companies**

Section 240 of the Act states that APRA must maintain a register of life insurance companies and the register must contain information prescribed in the regulations. The Principal Regulations require life insurers to name the State or Territory where they are incorporated. This is not relevant for branches of foreign life insurers, so the amendment requires branches to name the country in which their parent is incorporated. The Principal Regulations also require life insurers to provide the name and address of the company secretary. Again, this is not relevant for a branch and so this requirement is being removed for eligible foreign life insurance companies. The USFTA Act will amend the Act to require foreign life insurers that establish branches in

Australia to establish a compliance committee that will have powers of management in relation to the Australian branch. The amendment to the Principal Regulations requires the branch to supply the name and address of each member of the compliance committee.

**Items 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16: Applications for registration**

The Principal Regulations require companies to supply APRA with certain information on their business activities when applying to be registered to conduct life insurance business in Australia. The amendments tailor these requirements to make them relevant to foreign life insurers that are applying to establish a branch in Australia to conduct life insurance business.