

# Lloyd's security trust fund instrument No. 1 of 2017

## EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

*Insurance Act 1973*, section 68

Under subsection 68(1) of the *Insurance Act 1973* (the Act), APRA may, by legislative instrument, require Lloyd's to maintain such security trust fund arrangements and ancillary or incidental arrangements as are specified in, or ascertained in accordance with, the instrument.

On 12 April 2017, APRA made Lloyd's security trust fund instrument No. 1 of 2017 (the instrument), following the sunset of Lloyd's Security Trust Fund Determination No 1 of 2000 made on 9 June 2000 (the old Lloyd's Security Trust Fund Determination).

The instrument will take effect upon registration on the Federal Register of Legislation.

### **1. Background**

The Act provides for regulation of the operations of Lloyd's in the Australian insurance market. This includes the capacity of APRA to require Lloyd's, under a legislative instrument, to have a security trust fund in Australia, into which amounts are deposited to provide for the protection of policy holders in Australia. APRA also has authority under the Act to make rules specifying certain aspects of the operation of security trust funds.

The relevant legislative instrument relating to security trust funds has lapsed. It is necessary to remake this legislative instrument to ensure that the security trust arrangements continue to work as intended. In particular, to continue the requirement for APRA approval of a change of trustee or any consequential changes to the trust deed.

### **2. Purpose and operation of the instrument**

The instrument sets out:

- requirements relating to the security trust fund arrangements; and
- ancillary or incidental arrangements for Lloyd's.

The requirements of the instrument replicate in substance those of the old Lloyd's Security Trust Fund Determination. Minor amendments have been made to update the style and wording of the old instrument to align with current APRA practice. In consultation with Lloyd's, APRA has also included in the instrument a discretion to:

- approve from time to time the form of the audit certificate to be provided to APRA, so that it can be adjusted to reflect changed conditions; and

- approve the termination of a security trust fund where APRA can be satisfied that to do so would be appropriate.

The instrument requires that a trust deed for a security trust fund must provide for payment in Australia for insurance liabilities secured by the fund. The trust deed for a security trust fund, or an alteration of such a trust deed, must also be approved by APRA. Similarly, a trustee of a security trust fund must also be approved by APRA.

Where the new instrument incorporates by reference the provisions of an Act or a legislative instrument then, unless the contrary intention appears in the instrument, these provisions are incorporated as in force from time to time. Current and historic Australian legislation and legislative instruments referenced in the instrument are available at [www.legislation.gov.au](http://www.legislation.gov.au).

The instrument also references the *Insurance Companies Act 1982* of the United Kingdom as in force on 3 September 2016. This legislation is accessible at [www.legislation.gov.uk](http://www.legislation.gov.uk).

### **3. Consultation**

The instrument applies only to Lloyd's. APRA has consulted with Lloyd's on the making of the instrument.

The instrument will apply to Lloyd's on the date of its registration on the Federal Register of Legislation.

### **4. Regulation Impact Statement**

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for this legislative instrument.

### **5. Statement of compatibility prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011**

A Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at Attachment A to this Explanatory Statement.

## **Attachment A**

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### **Lloyd's security trust fund instrument No. 1 of 2017 (the Legislative Instrument)**

The Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

#### **Overview of the Legislative Instrument**

The purpose of the Legislative Instrument is to remake Lloyd's Security Trust Fund Determination No 1 of 2000. The legislative instrument ensures that APRA maintains the capacity to require Lloyd's to have a security trust fund in Australia, into which amounts are deposited to provide for the protection of policyholders in Australia.

#### **Human rights implications**

APRA has assessed the Legislative Instrument and is of the view that it does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the HRPS Act. Accordingly, in APRA's assessment, the instrument is compatible with human rights.

#### **Conclusion**

The Legislative Instrument is compatible with human rights because it does not raise any human rights issues.