

Superannuation regulator roles

Recommendation

Recommendation 3.8 – Adjustment of APRA and ASIC’s roles

The roles of APRA and ASIC with respect to superannuation should be adjusted, as referred to in Recommendation 6.3.

Recommendation 6.3 – General principles for co-regulation

The roles of APRA and ASIC in relation to superannuation should be adjusted to accord with the general principles that:

- APRA, as the prudential regulator for superannuation, is responsible for establishing and enforcing Prudential Standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by superannuation entities APRA supervises are met within a stable, efficient and competitive financial system; and
- as the conduct and disclosure regulator, ASIC’s role in superannuation primarily concerns the relationship between RSE licensees and individual consumers.

Recommendation 6.4 – ASIC as conduct regulator

Without limiting any powers APRA currently has under the SIS Act, ASIC should be given the power to enforce all provisions in the SIS Act that are, or will become, civil penalty provisions or otherwise give rise to a cause of action against an RSE licensee or director for conduct that may harm a consumer. There should be co-regulation by APRA and ASIC of these provisions.

Recommendation 6.5 – APRA to retain functions

APRA should retain its current functions, including responsibility for the licensing and supervision of RSE licensees and the powers and functions that come with it, including any power to issue directions that APRA presently has or is to be given.

Existing law

- The SIS Act is administered predominantly by APRA, with ASIC responsible for administering provisions relating to disclosure and the record keeping.
- Superannuation-related entities are only regulated by ASIC under the Corporations Act to the extent that they are required to have an AFS licence to:
 - “deal” in a superannuation interest; or
 - provide financial product advice.

Summary of proposed reform

- The AFS licensing regime in the Corporations Act and the ASIC Act consumer protection regime would apply to the provision of a “superannuation trustee service”, which is defined as operating an RSE as trustee of the entity.
 - this means providers of a “superannuation trustee service” will need to obtain an AFS licence;
 - an exception is proposed for superannuation trustee services provided only to wholesale clients;
 - ASIC is required to obtain APRA consent before it can take AFSL administrative action against a superannuation trustee licensee; and
 - superannuation trustees and directors cannot be indemnified out of the fund for Corporations Act/ASIC Act penalties.
- Responsibility for administration of the SIS Act is amended as follows:
 - ASIC and APRA will jointly administer specified penalty provisions and provisions prescribed in the legislation that broadly relate to member protections (including, for example, the statutory covenants and the sole purpose test);
 - ASIC will continue to have sole jurisdiction for provisions relating to disclosure and record keeping; and
 - the Commissioner of Taxation will retain responsibility for SMSFs.

Comments

- These changes will further enhance cooperation between ASIC and APRA on superannuation, and highlight that conduct in superannuation will be a key regulatory focus. Coupled with the introduction of the Financial Accountability Regime, superannuation trustees will need to engage with ASIC in a more robust way.
- However, it is unclear how the interactions of trustees with each regulator will change, given that there will be inevitable overlap in their respective remits.