Version
as at 1 July 2025

Insurance (Prudential Supervision) Act 2010

Public Act	2010 No 111
Date of assent	7 September 2010
Commencement	see section 2

Contents

		Page
1	Title	12
2	Commencement	12
	Part 1 **Preliminary provisions**	
	Purposes and principles	
3	Purposes	13
4	Principles to be taken into account under this Act	13
	Overview	
5	Overview	14
	Interpretation	
6	Interpretation	14
7	Meaning of contract of insurance	22
8	Meaning of carrying on insurance business in New Zealand	23
9	Bank may declare that person is not carrying on insurance business in New Zealand in certain circumstances	25
10	Meaning of associated person and holding entity	26

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Reserve Bank of New Zealand.

11 Application of Act to friendly societies 26

Bank's functions

12 Bank's functions under Act 26
13 Bank must have regard to directions about Government policy objectives *[Repealed]* 27

Act binds the Crown

14 Act binds the Crown 27

Part 2
Licensing and prudential regulation of insurers

Subpart 1—Licensing of insurers

Requirement to be licensed

15 Persons that carry on insurance business in New Zealand must be licensed 27
16 Offence for person who is not licensed insurer to hold itself out to be licensed insurer 27

Process for obtaining licence

17 Application for licence as insurer 28
18 Applicant must provide fit and proper policy, fit and proper certificate, and risk management programme 28
19 Entitlement to licence 29
20 Carrying on business in prudent manner 30

Conditions of licence

21 Conditions of licence 31
22 Bank may modify conditions of licence 33
23 Offence to fail to comply with conditions of licence 33
24 Licensed insurer must report likely failure to comply with solvency margin imposed under licence conditions 33

Notification of decision

25 Bank must notify applicant of decision and give notice on register 33

Bank must be notified before control is obtained and before corporate form is changed

26 Bank must be notified before control is obtained 34
27 Bank must be notified before corporate form is changed 35
28 Bank must consider whether it is still satisfied as to licensing matters 35
29 Offence to fail to notify or provide information 35

Cancellation of licence

30 Cancellation of licence 35
31 Assignment of liabilities to enable cancellation 37

32 Bank's approval of assignment 37
33 Effect of assignment 38

Fit and proper requirements

34 Licensed insurer must be subject to fit and proper policy for directors and relevant officers 38
35 Group fit and proper policy 39
36 Fit and proper standards 39
37 Licensed insurer must provide fit and proper certificate for new directors or relevant officers or if Bank requires certificate 40
38 Bank may exempt overseas insurers from compliance with section 37(1) 41
39 Power to remove directors and relevant officers 41
40 How power to remove is exercised 42
41 Former director or relevant officer must not accept reappointment in breach of direction 42
42 Appeals from Bank's decision 43
43 Appeal to Court of Appeal on question of law 43

Transfers and amalgamations

44 Transfers and amalgamations must be approved 43
45 Request for approval 44
46 Actuarial or other report on transfer or amalgamation proposal 44
47 Costs of report 45
48 Bank must have regard to certain matters in considering request 45
49 Bank's decision on approval 45
50 Offence to fail to comply with conditions of approval 46
51 Requirement for approval is in addition to requirements under other enactments 46
52 Transfer or amalgamation not invalidated 46
53 Effect of assignment for purposes of approved transfer 46

Publication of policies

[Repealed]

54 Publication of policies *[Repealed]* 47

Register

54A Register 47

Subpart 2—Prudential regulation of insurers

Solvency standards

55 Bank may issue solvency standards 47
56 Matters that may be contained in solvency standards 48
57 Offence to fail to comply with reporting and disclosure requirements 49
58 Incorporation by reference *[Repealed]* 50

59 Bank may exempt overseas insurers from compliance 50

Financial strength ratings

60 Licensed insurer must have current financial strength rating 50
61 Financial strength rating must refer to overseas policyholder preference 51
62 Bank may approve rating agencies 51
63 Licensed insurer must notify Bank of change in rating or credit watch warning 52
64 Disclosure of current rating to policyholder 52
65 Disclosure by insurers not required to be rated 53
66 Policyholder may cancel if disclosure is not made 54
67 Disclosure of rating on licensed insurer's Internet site 54
68 Other advertising of ratings 55
69 Licensed insurer must give public notice of downgrade or notice to policyholders 55
70 Licensed insurer must not disclose or advertise ratings from non-approved agencies 55
71 Offence to fail to comply with disclosure obligations 56

Disclosure of overseas policyholder preference

72 Overseas insurer must disclose overseas policyholder preference 56

Risk management

73 Licensed insurer must be subject to and comply with risk management programme 56
74 Group risk management programme 57
75 Offence to fail to comply with risk management requirements 58

Appointment of actuary and actuarial review

76 Requirement for licensed insurers to have appointed actuary 58
77 Review of actuarial information in, or used in the preparation of, financial statements 58
78 Appointed actuary's report 59
79 Provisions relating to auditor's report 60
80 Access to information 60

Supply of financial statements

81 Financial statements and interim financial information must be given to Bank 61

Subpart 3—Statutory funds of life insurers

General requirements

82 Requirement that life insurer have statutory funds 62
83 Overview of requirements regarding statutory funds 62
84 Meaning of life policy 63
85 Composite policies 64

86	Interpretation in this subpart	65
87	Duty of life insurer in relation to statutory funds	66
88	Notice to Bank when fund established	66
89	Life insurer must transfer assets on establishment	66
90	Assets of statutory fund	66
91	Identification of life policies referable to statutory fund	67
92	Payments to statutory fund	68
93	Capital payments to statutory funds	68
94	Expenditure and application of statutory fund	68
95	Prohibition of reinsurance between funds	69
96	Effect of non-compliance with section 94: general	69
97	Effect of non-compliance with section 94: certain classes of transactions	70
98	Investment performance guarantee: limit of certain liabilities	70
99	Investment of statutory funds	71
100	Recording of restricted investments	72
101	Transfer of assets between funds	72
102	Restriction on restructure or termination of statutory funds	72
103	Ascertainment of income and outgoings of statutory fund and providing for apportionment of income, outgoings, and liabilities	73
104	Life insurer must keep records of income and outgoings	73
	Duties and liabilities of directors, etc	
105	Duty of directors in relation to statutory funds	74
106	Bank may give notice	75
107	Liability of directors	75
108	Bank's power to sue in name of life insurer	75
	Restructure and termination of statutory funds	
109	Restructure of statutory funds	75
110	Termination of statutory funds	76
	Additional requirements for transfer of life policies between statutory funds by endorsement	
111	Additional requirements for transfer of life policies between statutory funds by endorsement	77
	Allocation of profits and losses and of capital payments and distribution of profits and capital	
112	Life insurer must allocate operating profits and losses in accordance with prescribed requirements	78
113	Allocation of capital	78
114	Distribution of retained profits	78
115	Distribution of shareholders' or members' capital	78
	Application of statutory fund assets on liquidation or winding up	
116	Application of statutory fund assets	78

Liability of directors for loss to statutory fund

117 Liability of directors for loss to statutory fund 80

Offence

118 Offence to fail to comply with subpart 81

Exemptions

119 Bank may exempt overseas insurers from compliance with subpart 81

Part 3
Prudential supervision of licensed insurers

Bank to undertake prudential supervision

120 Prudential supervision 82

Supply of information

121 Supply of information by licensed insurers for purposes of prudential supervision 82
122 Notice may require supply of information, data, or forecasts in relation to associated persons 82
123 Associated persons may be required to supply information to licensed insurers 83
124 Supply of information by other persons for purposes of prudential supervision 83
125 Requirement that information, data, or forecasts be audited or reviewed 83
126 Bank may require report relating to licensed insurers or associated persons 84
127 Disclosure of information to Bank by auditors and actuaries 84
128 Auditor or actuary to inform of intention to disclose 85
129 Protection of auditors and actuaries 85

Investigations

130 Investigations 85
131 Power to obtain information or documents 86
132 Power to enter and search place 86
133 Offences in relation to investigations 87
134 Effect of final decision that exercise of powers under sections 130 and 131 unlawful 87

Miscellaneous provisions

135 Confidentiality of information, data, documents, and forecasts 88
136 Limits on further disclosure of information, data, documents, or forecasts 89
137 Application of other enactments to information, data, documents, or forecasts published or disclosed under section 135 90

Part 4
Distress management

Subpart 1—Recovery plans

138 Bank may require licensed insurer to prepare recovery plan 90
139 Recovery plan must be provided to Bank for approval 92
140 Licensed insurer must comply with recovery plan 92
141 Amendments to recovery plan 92
142 Offence to fail to comply with recovery plan requirements 92

Subpart 2—Directions to licensed insurers and associated persons

143 Bank may give directions to licensed insurer 92
144 Scope of directions to licensed insurer 93
145 Bank may give directions to associated person 94
146 Scope of directions to associated person 94
147 Miscellaneous matters relating to directions 95
148 Offence to contravene directions 95
149 Power to remove, replace, or appoint directors, auditor, or actuary 95
150 Offence to disclose giving of direction or notice 96

Subpart 3—Liquidation or voluntary administration of licensed insurers

Bank may apply to put insurer into liquidation or voluntary administration, or apply for reduction of value of contracts of insurance

151 Bank may apply for liquidation of insurers 97
152 Bank may apply for High Court to reduce value of contracts of insurance 98
153 Bank may apply for voluntary administration of licensed insurers 98

Bank's approval for voluntary liquidation or appointment of administrator by company

154 Bank's approval for voluntary liquidation or appointment of administrator by company 98

Bank's participation in insolvency procedures and certain other proceedings

155 Bank may make certain applications in respect of voluntary administration or liquidation and appear and be heard in proceedings 99
156 Bank's participation in arrangements, amalgamations, and compromises under Companies Act 1993 99
157 Bank must be sent copy of applications under Parts 14 to 16 of Companies Act 1993 99
158 Bank must be sent copies of certain documents and may inspect certain accounts and records 100

159 Attendance of representative of Bank at certain meetings for licensed insurer in voluntary administration, subject to deed of company arrangement, or in liquidation 100
160 Bank may require meeting of creditors or shareholders to appoint liquidation committee 101

Special insolvency provisions for insurers

161 High Court may reduce value of contracts of insurance 101
162 High Court may require actuarial report 102
163 Continuation of life policies if insurer in liquidation 102
164 Liquidator or deed administrator may apply to High Court for approval of scheme of transfer of insurance business 103
165 Right to attend and be heard 103
166 Approval of scheme 104
167 Effect of approval 104
168 Application by Bank for directions to liquidator, administrator, or deed administrator 105
169 Valuation of policies by liquidator or deed administrator 105

Subpart 4—Statutory management

Commencement of statutory management

170 Statutory management of licensed insurers and associated persons 105
171 Statutory management of overseas persons 106
172 Date and time of appointment 107
173 Grounds on which licensed insurer may be declared to be subject to statutory management 107
174 Grounds on which associated person may be declared to be subject to statutory management 107
175 Bank must give notice of recommendation 108
176 Application of this subpart to joint statutory managers, associated persons, and subsidiaries 108
177 Continuation of statutory management of companies restored to New Zealand register 109

Exercise of powers

178 Considerations affecting exercise of powers by statutory manager 109
179 Statutory manager to comply with directions of Bank 110

Application of Corporations (Investigation and Management) Act 1989

180 Application of Corporations (Investigation and Management) Act 1989 110
181 Act does not limit application of Corporations (Investigation and Management) Act 1989 111

Power to obtain documents and information

182 Powers to obtain documents and information 112

Sales and dispositions

183 Sale requires Bank's approval 112
184 Consents not required under other enactments 112

Body corporate may be formed to acquire branch of overseas person

185 Statutory manager may form body corporate to acquire business of branch of overseas person 113
186 Vesting of property subject to security 114
187 Proof of vesting 114
188 Provisions applying if liabilities included in sale 114

Obligations incurred by statutory manager

189 Obligations incurred by statutory manager 114

Value of contracts of insurance

190 Statutory manager may value contracts of insurance 115
191 Value of contracts of insurance may be reduced by Order in Council 115

Auditor, actuary, and annual financial statements and records

192 Appointment of auditor and actuary 115
193 Prior auditor or actuary ceases to hold office 116
194 Removal of auditor or actuary 116
195 Annual financial statements 116
196 Annual report by statutory manager 117

Termination of statutory management

197 Termination of statutory management by Order in Council 117
198 Termination of statutory management on liquidation 118
199 Time of termination 118

Part 5
Miscellaneous provisions

Provisions relating to Lloyd's

200 Lloyd's underwriters must not carry on insurance business in New Zealand unless Lloyd's holds licence 119
201 Lloyd's may apply for licence on behalf of underwriting members 119
202 Lloyd's fit and proper policy and risk management programme 119
203 Bank must issue temporary licence to Lloyd's pending consideration of its application 120
204 Lloyd's underwriters may carry on insurance business in New Zealand if Lloyd's holds licence 120
205 Issue of licence to Lloyd's 121

206 Conditions of Lloyd's licence 122
207 Obligations on Lloyd's 122
208 Provisions that do not apply in respect of Lloyd's or Lloyd's underwriters 122
209 Bank may direct that Lloyd's underwriters must not issue or renew contracts of insurance 123
210 Agent of Lloyd's and address for service 123
211 Lloyd's to give notice of enactments and bylaws 123
212 Act does not authorise Lloyd's underwriter to carry on any business underwriter could not otherwise have carried on 124

Access to information by overseas supervisor

213 Access to information by overseas supervisor 124
214 Duties of person on receipt of notice under section 213 124

Offences

215 False declarations and representations 125
216 Liability of directors 125
217 Defence for offences against this Act 125
217A Time for filing charging document 126

Prohibition against falsely holding out New Zealand connection

218 Prohibition against falsely holding out New Zealand connection 126
219 Certain New Zealand persons and overseas companies prohibited from using certain words in name 127
220 Prohibition does not apply in certain cases 127

Restriction on insurer's constitution

221 Insurer's constitution must not permit directors to act in holding entity's best interests even though it is not in insurer's best interests 128

Ban ordered by District Court

222 Power to ban certain persons from participating in insurance business 128
223 Notice of hearing 130
224 Appeals to High Court 130
225 Appeal to Court of Appeal on question of law 130
226 Register of banned persons 131
227 Search of register 131
228 Offence for banned person to participate in insurance business in breach of order 132

Notice and service

229 Notice and service of documents 132

Protection from liability and indemnity

[Repealed]

230 Protection from liability *[Repealed]* 133
231 Indemnity *[Repealed]* 133

General provisions relating to declarations and exemptions

232 General provisions relating to declarations and exemptions 133

General provisions relating to fit and proper standards and solvency standards

233 Status of standards 135
234 Public notice of standards *[Repealed]* 135
235 Consultation 136
236 Bank may amend, revoke, or replace standard *[Repealed]* 136

Regulations

237 Regulations 136
238 Regulations may provide for exemptions 140

Incorporation by reference

238A Incorporation by reference 141

Repeals and consequential amendments

239 Amendments to Life Insurance Act 1908 142
240 Repeals 142
241 Amendments to other enactments 142
242 Amendment to Financial Service Providers (Registration and Dispute Resolution) Act 2008 142

Transitional and savings provisions

243 Bank may approve certain transfers 142
244 Bank must issue provisional licence pending consideration of application 143
245 Bank may also issue provisional licence for insurer that is or will be in run-off 144
246 Duration of provisional licence 144
247 Provisional licence holder only required to comply with requirements to extent required by conditions 146
248 Conditions of licence 146
249 Public Trust must return deposits 147
250 Deposit may be withdrawn in accordance with Insurance Companies' Deposits Act 1953 or Life Insurance Act 1908 148
251 Savings in respect of judicial management 148

Schedule 1 149
General provisions relating to incorporation by reference

Schedule 2 152
General provisions relating to search powers
[Repealed]
Schedule 3 153
Consequential amendments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Insurance (Prudential Supervision) Act 2010.

2 Commencement

(1) Section 1, this section, Part 1, sections 36, 55 to 58, 62, 103, 230 to 238, and 241(1), Schedule 1, and Part 1 of Schedule 3 come into force on the day after the date on which this Act receives the Royal assent.

(2) Section 242 comes into force on the day that is 3 years after the date on which this Act receives the Royal assent.

(3) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.

(4) To the extent that it is not previously brought into force under subsection (3), the rest of this Act comes into force on the day that is 18 months after the date on which this Act receives the Royal assent.

(5) Subsection (4) is subject to subsection (2).

(6) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 2(3): section 244 brought into force, on 30 September 2010, by clause 2 of the Insurance (Prudential Supervision) Act Commencement Order 2010 (SR 2010/324).

Section 2(3): sections 17–35, 37–54, 59, 73(2), (3), 74, 119, Part 3, Part 4, 201–217, 221–229, 241(2), 243, 245–248, Schedule 2, and Parts 2 and 3 of Schedule 3 brought into force, on 1 February 2011, by clause 2 of the Insurance (Prudential Supervision) Act Commencement Order (No 2) 2010 (SR 2010/446).

Section 2(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 1
Preliminary provisions

Purposes and principles

3 Purposes

(1) The purposes of this Act are to—

(a) promote the maintenance of a sound and efficient insurance sector; and

(b) promote public confidence in the insurance sector.

(2) Those purposes are achieved by—

(a) establishing a system for licensing insurers; and

(b) imposing prudential requirements on insurers; and

(c) providing for the supervision by the Reserve Bank of New Zealand (the **Bank**) of compliance with those requirements; and

(d) conferring certain powers on the Bank to act in respect of insurers in financial distress or other difficulties.

4 Principles to be taken into account under this Act

In achieving the purposes of this Act, the Bank must take into account the following principles that are relevant to the performance of functions or duties imposed, or the exercise of powers conferred, on the Bank by this Act:

(a) the importance of insurance to members of the public in terms of their personal or business risk management:

(b) the importance of maintaining the sustainability of the New Zealand insurance market:

(c) the importance of dealing with an insurer in financial distress or other difficulties in a manner that aims to—

(i) adequately protect the interests of its policyholders and the public interest; and

(ii) ensure that any failure, or possible failure, of the insurer does not have the potential to significantly damage the financial system or the economy of New Zealand:

(d) the importance of recognising—

(i) that it is not a purpose of this Act to eliminate all risk of insurer failure; and

(ii) that members of the public are responsible for their own decisions relating to insurance:

(e) the desirability of providing to the public adequate information to enable members of the public to make those decisions:

(f) the desirability of consistency in the treatment of similar institutions (while recognising that the New Zealand insurance market comprises a diversity of institutions):

(g) the need to maintain competition within the insurance sector:

(h) the need to avoid unnecessary compliance costs:

(i) the desirability of sound governance of insurers:

(j) the desirability of effective risk management by insurers.

Overview

5 Overview

(1) In this Act,—

(a) this Part deals with preliminary matters, including purposes, principles, interpretation, the Bank's functions under this Act, and the application of this Act to the Crown:

(b) Part 2 contains provisions relating to the licensing and prudential regulation of insurers:

(c) Part 3 contains provisions relating to the prudential supervision of insurers:

(d) Part 4 contains provisions relating to distress management, including provisions relating to recovery plans, directions, liquidation or voluntary administration of insurers, and statutory management:

(e) Part 5 contains miscellaneous provisions, including provisions relating to Lloyd's, offences, banning orders, regulations, consequential amendments, and transitional arrangements.

(2) This section is only a guide to the general scheme and effect of this Act.

Interpretation

6 Interpretation

(1) In this Act, unless the context otherwise requires,—

accounting period, in relation to an insurer, means a year ending on a balance date of the insurer and, if, as a result of the date of the formation or incorporation of the insurer or a change of the balance date of the insurer, the period ending on that date is longer or shorter than a year, that longer or shorter period is an accounting period

actuary means a person who is—

(a) a Fellow of the New Zealand Society of Actuaries Incorporated; or

(b) the holder of an equivalent professional qualification approved by the Bank by notice to an insurer

administrator means an administrator under Part 15A of the Companies Act 1993

applicant means a body corporate that has applied for a licence

appointed actuary, in relation to an insurer,—

(a) means a person holding an appointment by the insurer under section 76(1); and

(b) includes a person holding an appointment by the insurer under section 76(2) that is acting because the person appointed under section 76(1) is unable to act; and

(c) includes a person appointed as an actuary by the Bank under section 149; and

(d) includes a person appointed as an actuary by a statutory manager under section 192

approved rating agency means a rating agency approved by the Bank under section 62

associated person has the meaning set out in section 10(2)

Bank means the Reserve Bank of New Zealand continued under the Reserve Bank of New Zealand Act 2021

Bank's Internet site means an Internet site maintained by, or on behalf of, the Bank

captive insurer means an insurer that—

(a) is a subsidiary of an entity that is not an insurer (the **parent**); and

(b) only insures risks of the parent or of other subsidiaries of the parent (or both)

carries on insurance business in New Zealand has the meaning set out in section 8

chief executive officer means a person occupying the position of chief executive officer by whatever name called

chief financial officer means a person occupying the position of chief financial officer by whatever name called

condition,—

(a) in relation to a licensed insurer, means any condition of its licence; and

(b) in relation to Lloyd's or a Lloyd's underwriter, means any condition of the licence issued to Lloyd's under section 203 or 205

contract of insurance has the meaning set out in section 7

current financial strength rating means a financial strength rating that, in relation to a date on which an insurer is required to have a rating, was given not earlier than 1 year before that date

deed administrator has the same meaning as in section 239B of the Companies Act 1993

deed of company arrangement has the same meaning as in section 239B of the Companies Act 1993

derivative transaction means—

(a) a transaction that is a rate swap transaction, swap option, basis swap, forward rate transaction, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, forward purchase or sale of a security, or commodity or other financial instrument or interest (including an agreement or option that relates to any of these transactions); or

(b) a transaction that is similar to any transaction referred to in paragraph (a) that—

  (i) is currently, or in the future becomes, recurrently entered into in the financial markets; and

  (ii) is a forward, swap, future, option, or other derivative on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, environmental or climatic variables, or other benchmarks against which payments or deliveries are to be made

direction means any direction given by the Bank under this Act or the regulations

director means—

(a) a person occupying the position of director by whatever name called:

(b) in the case of an entity that does not have directors as such, any trustee, manager, or other person who acts in relation to that entity in the same or a similar fashion as a director would act were that entity a company incorporated in New Zealand under the Companies Act 1993

document has the same meaning as in section 4(1) of the Evidence Act 2006

failing to maintain a solvency margin, in relation to an insurer, means that the insurer is failing to comply with a condition of its licence imposed under section 21(2)(b) or (c)

financial statements has the same meaning as in section 6 of the Financial Reporting Act 2013

financial strength rating,—

(a) in relation to an insurer other than a Lloyd's underwriter, means a rating that indicates the ability of the insurer to meet its liabilities under contracts of insurance as they fall due:

(b) in relation to a Lloyd's underwriter, means a rating obtained by Lloyd's that applies to the Lloyd's market

fit and proper standard means a fit and proper standard issued under section 36

generally accepted accounting practice has the same meaning as in section 8 of the Financial Reporting Act 2013

governing body means,—

(a) in relation to a body corporate, the board of directors (or other persons or body exercising powers of management, however described) of the body corporate:

(b) in relation to a partnership or other unincorporated body of persons, either—

(i) the board of directors (or other persons or body exercising powers of management, however described) of the partnership or other unincorporated body of persons; or

(ii) if there is no board or other persons or body as described in subparagraph (i), the partners of the partnership or members of the unincorporated body of persons

Governor means a person who occupies the position of Governor of the Bank (whether the person is appointed under section 82 or 96 of the Reserve Bank of New Zealand Act 2021)

group financial statements has the same meaning as in section 7 of the Financial Reporting Act 2013

health insurance means insurance against a liability to pay fees or charges relating to the provision of a health service (within the meaning of section 5(1) of the Health Practitioners Competence Assurance Act 2003)

holding entity has the meaning set out in section 10(3)

home jurisdiction means,—

(a) in relation to an overseas person that is a body corporate, the jurisdiction in which that body is incorporated:

(b) in relation to a Lloyd's underwriter, the United Kingdom

insurance intermediary means a person—

(a) who, for reward, arranges contracts of insurance in New Zealand or elsewhere; and

(b) who does so as the employee of or agent for 1 or more insurers or as the agent of the policyholder

insurer means a person by whom or on whose behalf the risk or part of the risk to which a contract of insurance relates is accepted

investigator means a person appointed under section 130(2)(b)

licence—

(a) means a licence issued under Part 2; and

(b) includes a provisional licence

licensed insurer—

(a) means a person that holds a licence; and

(b) includes—

(i) a person that holds a provisional licence; and

(ii) a Lloyd's underwriter that is treated as being a licensed insurer under section 204

life insurer—

(a) means a licensed insurer that issues, or is liable under, life policies; and

(b) includes a Lloyd's underwriter that issues, or is liable under, life policies and is treated as being a licensed insurer under section 204

life policy has the meaning set out in section 84

Lloyd's means the society of that name incorporated by the Imperial Act known as the Lloyd's Act 1871

Lloyd's underwriter means an underwriting member of Lloyd's

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

New Zealand chief executive officer, in relation to an overseas insurer, means—

(a) the most senior officer of the insurer who is ordinarily resident in New Zealand; or

(b) another person who may be nominated by the insurer and is agreed to in writing by the Bank

New Zealand chief financial officer, in relation to an overseas insurer, means—

(a) the most senior officer of the insurer who is ordinarily resident in New Zealand (other than the New Zealand chief executive officer) who is responsible for the accounting and financial reporting obligations of the insurer; or

(b) another person who may be nominated by the insurer and is agreed to in writing by the Bank

New Zealand policyholder means a policyholder—

(a) who is ordinarily resident in New Zealand; or

(b) that is incorporated or formed in New Zealand

operating fraudulently or recklessly has the meaning set out in subsection (3)

ordinarily resident in New Zealand has the meaning set out in subsection (4)

overseas company means a body corporate that is incorporated outside New Zealand

overseas insurer—

(a) means an insurer that is an overseas person; and

(b) includes a Lloyd's underwriter that is treated as being a licensed insurer under section 204

overseas person means—

(a) a body corporate incorporated outside New Zealand; or

(b) an unincorporated body that has its head office or principal place of business outside New Zealand

overseas policyholder preference means, in relation to an overseas insurer, a law or regulatory requirement of the overseas insurer's home jurisdiction that—

(a) relates to the recognition and priorities of claims of creditors or classes of creditors in the event of the insurer's insolvency; and

(b) has the effect, directly or indirectly, of—

(i) giving a material preference to policyholders in the insurer's home jurisdiction as compared to other policyholders; or

(ii) otherwise being materially disadvantageous to New Zealand policyholders as compared to policyholders in the insurer's home jurisdiction

overseas supervisor means any authority or body in any country other than New Zealand that performs functions in relation to insurers that correspond with, or are similar to, those conferred on the Bank under this Act

policyholder, in relation to a contract of insurance, means—

(a) the person who has entered into the contract of insurance with the insurer; or

(b) if the rights of that person under the contract of insurance have been assigned, transferred by the operation of the contract, or transferred by operation of law, the person who has those rights

premium includes any money or other consideration that is in substance a premium (regardless of what it is called in the contract)

provisional licence means a licence issued under section 244 or 245

regulations means regulations in force under this Act

reinsurance means insurance under which an insurer indemnifies another insurer (the **cedent**) against losses on 1 or more contracts of insurance entered into by the cedent

related party, in relation to an insurer, means any of the following:

(a) an associated person of the insurer:

(b) a director or relevant officer of the insurer or any other person occupying a position that allows the person to exercise significant influence over the management or administration of the insurer:

(c) a relative of a person referred to in paragraph (a) or (b):

(d) a director of an associated person of the insurer:

(e) a person who owns, or in any way has the power to control (whether directly or indirectly), or has the right to acquire, 10% or more of the voting rights in the insurer:

(f) a person who has control (whether directly or indirectly) or significant influence over 25% or more of the composition of the governing body of the insurer

relative has the same meaning as in section 2(1) of the Companies Act 1993

relevant officer, in relation to an insurer, means a person who occupies any of the following positions in respect of the insurer:

(a) in the case of an overseas insurer,—

  (i) New Zealand chief executive officer:

  (ii) New Zealand chief financial officer:

  (iii) the appointed actuary:

(b) in any other case,—

  (i) chief executive officer:

  (ii) chief financial officer:

  (iii) the appointed actuary

serious wrongdoing means an act, omission, or course of conduct that—

(a) is misleading or deceptive; or

(b) involves the unlawful or corrupt use of the funds or resources of an entity; or

(c) constitutes an offence that is punishable by imprisonment for a term of 2 years or more; or

(d) is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement; or

(e) otherwise reflects adversely on a person's competence, diligence, judgement, honesty, or integrity

solvency standard means a standard issued under section 55

statutory fund means a statutory fund maintained under subpart 3 of Part 2

subsidiary—

(a) means a subsidiary within the meaning of sections 5 to 8 of the Companies Act 1993; and

(b) in section 81, includes any entity that is classified as a subsidiary in any applicable financial reporting standard (within the meaning of section 5 of the Financial Reporting Act 2013)

voluntary administration means voluntary administration under Part 15A of the Companies Act 1993

voting right has the same meaning as in section 2(1) of the Banking (Prudential Supervision) Act 1989

voting security has the same meaning as in section 2(1) of the Banking (Prudential Supervision) Act 1989.

(2) For the purposes of this Act, a reference to an insurer's insurance business includes business relating to the investment, administration, and management of the assets of the insurer and of its statutory funds (if any).

(3) For the purposes of this Act, a licensed insurer or an associated person is **operating fraudulently or recklessly** if—

(a) it contracts liabilities that the directors did not, at the time the liabilities were contracted, honestly believe on reasonable grounds the insurer or person would be able to pay when they fell due for payment as well as all its other liabilities (including contingent liabilities); or

(b) it carries on any business, or operates, in a reckless manner; or

(c) it carries on any business or operates with intent to defraud its policyholders, creditors, shareholders, or members or the policyholders, creditors, shareholders, or members of any other person, or for any other fraudulent purpose.

(4) For the purposes of this Act, a person is **ordinarily resident in New Zealand** if that person—

(a) is domiciled in New Zealand; or

(b) is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New Zealand, whether or not that person has on occasions been away from New Zealand during that period.

(5) For the purposes of this Act, a reference to information or data that is false or misleading includes a reference to information or data that is false or misleading by reason of—

(a) the form or context in which it is published or supplied; or

(b) the omission of any other information that is material in the form and context in which it is published or supplied.

Section 6(1) **bank**: replaced, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 6(1) **derivative transaction**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 6(1) **financial statements**: replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **generally accepted accounting practice**: inserted, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **Governor**: replaced, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 6(1) **group financial statements**: replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **subsidiary**: replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **voting right**: amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 6(1) **voting security**: amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

7 Meaning of contract of insurance

(1) For the purposes of this Act, unless the context otherwise requires, **contract of insurance**—

(a) means a contract involving the transference of risk and under which a person (the insurer) agrees, in return for a premium, to pay to or for the account of another person (the policyholder) a sum of money or its equivalent, whether by way of indemnity or otherwise, on the happening of 1 or more uncertain events; and

(b) includes a contract of reinsurance.

(2) In this section, **uncertain event** means an event—

(a) with respect to which there is (from the perspective of the policyholder) an element of uncertainty as to when or whether it will take place; and

(b) that is beyond the insurer's control.

(3) However, a contract, to the extent that it provides for, or relates to, any of the following is not a contract of insurance for the purposes of this Act:

(a) a derivative transaction:

(b) a guarantee under which a person agrees to answer to another person for the debt, default, or liability of a third person:

(c) a repayment waiver (within the meaning of section 5 of the Credit Contracts and Consumer Finance Act 2003):

(d) a product or service guarantee or warranty in relation to any goods or services that is given or made by the manufacturer or supplier:

(e) any lump sum, annuity, pension, allowance, refund, or other payment arising from membership of a retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013):

(f) gambling (within the meaning of section 4(1) of the Gambling Act 2003):

(g) a call-out service that involves providing assistance in respect of a motor vehicle (within the meaning of section 2(1) of the Land Transport Act 1998) that cannot be operated (for example, because it has broken down, has run out of fuel, or has a flat tyre, or because the owner or operator is locked out), being a service that is not provided when the motor vehicle is involved in a motor vehicle accident, is stolen, or is damaged owing to theft or vandalism:

(h) any other transaction or matter of a class declared by regulations to be transactions or matters that are not by way of insurance.

Section 7(3)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 7(3)(e): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

8 Meaning of carrying on insurance business in New Zealand

(1) For the purposes of this Act, a person **carries on insurance business in New Zealand** if the person—

(a) is—

(i) a body corporate or an association of persons incorporated or formed in New Zealand; or

(ii) an overseas company that is required to be registered or deemed to be registered under the Companies Act 1993; or

(iii) an association of persons formed outside New Zealand that is carrying on business in New Zealand within the meaning of section 332 of the Companies Act 1993 (applied with all necessary modifications as if the references in that section to an overseas company were references to an association of persons); or

(iv) ordinarily resident in New Zealand; and

(b) acts, or has at any material time acted, as an insurer in New Zealand or elsewhere; and

(c) is liable as an insurer under a contract of insurance to a New Zealand policyholder.

(2) A person does not carry on insurance business in New Zealand for the purposes of this Act if the person is—

(a) a Crown entity within the meaning of section 7(1) of the Crown Entities Act 2004 (for example, the Accident Compensation Corporation or Toka Tū Ake – Natural Hazards Commission); or

(aa) the Bank or a subsidiary of the Bank; or

(b) the Crown, or an entity named in Part 1 of Schedule 1 of the Ombudsmen Act 1975; or

(c) the National Provident Fund Board (as continued in existence under section 12 of the National Provident Fund Restructuring Act 1990) or a subsidiary of the Board; or

(d) a public entity (within the meaning of section 5(1) of the Public Audit Act 2001) that is declared by regulations to be an entity to which this paragraph applies; or

(e) an incorporated society or other association of persons that satisfies the criteria specified in subsection (3); or

(f) the subject of a declaration under section 9.

(3) The criteria that an incorporated society or other association of persons must satisfy for the purposes of subsection (2)(e) are that—

(a) the primary purpose or purposes of the society or association relate to a particular profession, trade, or occupation; and

(b) all of the members of the society or association consist of 1 or more of the following:

(i) persons that belong to, or are associated with, the particular profession, trade, or occupation:

(ii) bodies corporate or associations of persons that carry on the business of the particular profession, trade, or occupation:

(iii) persons that act on behalf of any person referred to in subparagraph (i) or (ii); and

(c) the society or association is not carried on for profit; and

(d) insurance cover is provided by the society or association only—

(i) to its members or relatives of its members; or

(ii) in respect of the activities of its members when carrying out, or conducting, the work of the profession, trade, or occupation; and

(e) the provision of insurance cover by the society or association is ancillary or incidental to the primary purpose or purposes of the society or association.

(4) A person does not carry on insurance business in New Zealand for the purposes of this Act merely because the person—

(a) is a specified bailee who has liability in respect of goods belonging to another person and in the possession, or under the control, of the specified bailee for the purpose of the carriage, storage, or sale of those goods; or

(b) is an owner or operator of a specified place of accommodation who has liability in respect of goods belonging to another person that are—

(i) in the possession, or under the control, of a guest at the specified place of accommodation; or

(ii) deposited with the owner or operator of the specified place of accommodation for safe custody.

(5) In subsection (4),—

specified bailee means a carrier, carrier's agent, forwarding agent, wharfinger, shipping agent, or the owner or operator of a warehouse

specified place of accommodation means a hotel, motel, boarding house, or lodging house used for the provision of temporary or transient accommodation.

(6) Subsection (1) is subject to subsections (2) to (4) and section 9.

Section 8(2)(a): amended, on 1 July 2024, by section 163 of the Natural Hazards Insurance Act 2023 (2023 No 1).

Section 8(2)(a): amended, on 1 October 2019, by section 33 of the Kāinga Ora–Homes and Communities Act 2019 (2019 No 50).

Section 8(2)(aa): inserted, on 1 July 2025, by section 494(1) of the Deposit Takers Act 2023 (2023 No 35).

Section 8(2)(b): amended, on 1 July 2025, by section 494(2) of the Deposit Takers Act 2023 (2023 No 35).

9 Bank may declare that person is not carrying on insurance business in New Zealand in certain circumstances

(1) The Bank may, by notice to a person, declare that the person is not carrying on insurance business in New Zealand for the purposes of this Act if the Bank is satisfied that—

(a) the person is or will be an insurer only by reason of the fact that the person—

(i) has entered or will enter into an isolated contract of insurance as an insurer; or

(ii) occasionally enters into contracts of insurance as an insurer; and

(b) entering into the contract or contracts referred to in paragraph (a) is incidental or ancillary to the business carried on by the person; and

(c) requiring the person to obtain a licence would, in the circumstances, be unduly onerous or burdensome.

(2) Subsection (1) is subject to section 232 (which provides for general provisions relating to declarations and exemptions).

10 Meaning of associated person and holding entity

(1) For the purposes of this Act, unless the context otherwise requires, a person (**A**) is associated with another person (**B**) if—

(a) B is A's holding entity or subsidiary; or

(b) more than half of the voting securities of A, other than voting securities that carry no right to participate beyond a specified amount in a distribution of either profits or capital, are held by B and persons that are associated with B (whether directly or indirectly, but other than in a fiduciary capacity); or

(c) more than half of the voting securities of each of A and B, other than voting securities that carry no right to participate beyond a specified amount in a distribution of either profits or capital, are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

(d) the businesses of A and B have been so carried on that the separate business of each person, or a substantial part of it, is not readily identifiable; or

(e) there is another person with which both persons are associated.

(2) **Associated person** has a corresponding meaning.

(3) For the purposes of this Act, a person is another person's **holding entity** if, and only if, that other person is its subsidiary.

11 Application of Act to friendly societies

This Act applies to a friendly society (as that term is defined in section 2 of the Friendly Societies and Credit Unions Act 1982) as if the friendly society were a body corporate.

Section 11: replaced, on 1 April 2019, by section 56(2) of the Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Act 2018 (2018 No 17).

Bank's functions

12 Bank's functions under Act

The functions of the Bank under this Act are to—

(a) issue licences under Parts 2 and 5; and

(b) undertake prudential supervision of licensed insurers; and

(c) take appropriate action in respect of licensed insurers and other persons that have failed, are failing, or are likely to fail to comply with this Act or the regulations or are otherwise in financial or other difficulties; and

(d) carry out other functions and duties and exercise powers conferred on it by this Act and the regulations.

13 Bank must have regard to directions about Government policy objectives

[Repealed]

Section 13: repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Act binds the Crown

14 Act binds the Crown

This Act binds the Crown.

Part 2
Licensing and prudential regulation of insurers

Subpart 1—Licensing of insurers

Requirement to be licensed

15 Persons that carry on insurance business in New Zealand must be licensed

(1) Every person who carries on insurance business in New Zealand must hold a licence.

(2) A person who carries on insurance business in New Zealand without holding a licence commits an offence and is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $1,000,000.

Section 15(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

16 Offence for person who is not licensed insurer to hold itself out to be licensed insurer

(1) A person commits an offence if the person—

(a) is not a licensed insurer; and

(b) uses any name, title, trade mark, style, designation, or description that represents or implies that the person is a licensed insurer.

(2) Every person who commits an offence under this section is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $1,000,000.

Section 16(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Process for obtaining licence

17 Application for licence as insurer

(1) Any body corporate that carries on insurance business in New Zealand, or proposes to carry on insurance business in New Zealand, may apply to the Bank to be licensed as a licensed insurer.

(2) Applications must be—

(a) made in the manner that is specified by the Bank; and

(b) accompanied by payment of the prescribed fee for the application (if any).

(3) Every applicant must provide to the Bank the information that is required by the Bank to assist it in determining the application.

(4) An applicant commits an offence if it provides false or misleading information to the Bank for the purposes of an application and is liable, on conviction, to a fine not exceeding $1,000,000.

Section 17(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

18 Applicant must provide fit and proper policy, fit and proper certificate, and risk management programme

(1) An applicant must provide to the Bank with its application—

(a) a copy of a fit and proper policy that complies with section 34; and

(b) a certificate that—

(i) states that, in the opinion of all of the directors of the applicant after due inquiry by them, all of the directors and relevant officers of the applicant are, in accordance with the policy, fit and proper persons to hold their respective positions; and

(ii) is signed on behalf of all the directors of the applicant by at least 2 directors of the applicant (or, if the applicant has only 1 director, by that director); and

(iii) contains, or is accompanied by, a certificate from each director or relevant officer that is signed by the director or relevant officer and states that, in his or her opinion, he or she is, in accordance with the policy, a fit and proper person to hold the relevant position; and

(c) a copy of a risk management programme that complies with section 73.

(2) For the purposes of subsection (1)(b), the person that the insurer intends to appoint as the appointed actuary must be treated as being a relevant officer.

19 Entitlement to licence

(1) An applicant is entitled to be issued with a licence if the Bank is satisfied that—

(a) the applicant holds a current financial strength rating that complies with section 60 (unless a rating would not be required immediately after the issue of a licence as a result of the application of section 60(2)); and

(b) the applicant has the ability to carry on its business or proposed business in a prudent manner; and

(c) the applicant has the ability to comply with subpart 2 and the regulations; and

(d) in the case of an applicant who carries on, or proposes to carry on, business as a life insurer, the applicant has the ability to comply with subpart 3 and the regulations; and

(e) the applicant has the ability to comply with the proposed conditions of licence (if any); and

(f) the applicant holds and has the ability to maintain a minimum amount of capital that is specified in an applicable solvency standard; and

(g) the applicant has complied with section 18(1)(a) and (b) and the fit and proper policy that is provided is satisfactory; and

(h) the applicant has complied with section 18(1)(c) and the risk management programme that is provided is satisfactory; and

(i) the applicant's incorporation and ownership structure, ownership, governance structure, and financial strength are appropriate, having regard to the size and nature of the applicant's business or proposed business, including—

(i) the size and type of insurance business that is, or is proposed to be, carried out; and

(ii) the size and type of risks that are, or are proposed to be, insured; and

(j) in the case of an applicant that is an overseas person,—

(i) the law and regulatory requirements of the applicant's home jurisdiction that apply to the applicant and relate to the matters specified in subsection (3) are appropriate, having regard to whether that law and those requirements are, in terms of achieving the purposes of this Act, at least as satisfactory as the law and regulatory requirements of New Zealand that relate to those matters and apply to insurers incorporated in New Zealand; and

(ii) the nature and extent of prudential supervision that applies to the applicant and to insurers generally in the applicant's home jurisdiction are appropriate, having regard to whether the prudential

supervision is, in terms of achieving the purposes of this Act, at least as satisfactory as the nature and extent of prudential supervision that applies to insurers incorporated in New Zealand; and

(k) the applicant—

(i) is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008; or

(ii) complies with section 13(1)(a) of that Act; and

(l) the applicant has the ability to comply with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (if the applicant is, or will be, a reporting entity under that Act); and

(m) the applicant complies with any other prescribed requirements.

(2) For the purposes of subsection (1)(c) and (d), the Bank must, in the case of an applicant that is an overseas person, have regard to any overseas policyholder preference.

(3) For the purposes of subsection (1)(j)(i), the matters are—

(a) the licensing, registration, or authorisation of insurers; and

(b) the supervision of insurers; and

(c) solvency and capital standards that apply to insurers; and

(d) financial reporting, accounting, and auditing standards; and

(e) corporate governance standards; and

(f) matters concerning insurers that are insolvent or otherwise in serious financial difficulties; and

(g) the disqualification of persons to be or to act as directors or relevant officers of an insurer.

(4) The law and regulatory requirements referred to in subsection (1)(j)(i), and the nature and extent of the prudential supervision referred to in subsection (1)(j)(ii), must be treated as being appropriate for the purposes of those provisions if the applicant's home jurisdiction is a prescribed jurisdiction for the purposes of this subsection.

(5) If an applicant is not required under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to be registered under that Act, the applicant is still required to comply with section 13(1)(a) of that Act for the purposes of subsection (1)(k).

Section 19(1)(k)(ii): editorial change made by the PCO, on 29 October 2024, under sections 86(1) and 87(l)(iii) of the Legislation Act 2019 (2019 No 58).

Section 19(5): editorial change made by the PCO, on 29 October 2024, under sections 86(1) and 87(l)(iii) of the Legislation Act 2019 (2019 No 58).

20 Carrying on business in prudent manner

(1) Subsection (2) applies when the Bank is—

(a) considering, for the purposes of section 19(1)(b), the ability of an applicant to carry on its business or proposed business in a prudent manner; or

(b) considering what conditions should be imposed under section 21 relating to the applicant carrying on its business or proposed business in a prudent manner; or

(c) considering whether a licensed insurer is carrying on its business in a prudent manner.

(2) The Bank must confine its consideration to the following matters:

(a) financial and human resources in relation to the size and nature of the business or proposed business:

(b) internal controls or proposed internal controls:

(c) the size and type of insurance risk that is, or is proposed to be, carried by the applicant or insurer:

(d) reinsurance arrangements that have been, or are proposed to be, entered into:

(e) the extent to which the business or proposed business involves activities that are not insurance business and the nature of those activities (and, in particular, whether those activities may be prejudicial to the solvency of the applicant or insurer or its ability to comply with this Act or the regulations):

(f) the nature and extent of transactions that the applicant or insurer has with, or in respect of, related parties (for example, loans to, or from, a related party or guarantees in respect of a related party's debts):

(g) any other prescribed matters.

Conditions of licence

21 Conditions of licence

(1) A body corporate may be licensed as a licensed insurer unconditionally or subject to any conditions that the Bank may impose under subsection (2).

(2) A licence may be subject to any of the following conditions:

(a) conditions that relate to any of the matters referred to in section 20 (which relates to carrying on business in a prudent manner), including any matters prescribed by regulations made for the purposes of section 20(2)(g):

(b) conditions that require a licensed insurer to maintain a solvency margin in accordance with an applicable solvency standard (including requiring the insurer to maintain a minimum amount of capital in accordance with the standard):

(c) conditions that require a life insurer to maintain solvency margins in respect of the statutory funds of the insurer in accordance with an applicable solvency standard (including requiring the insurer to maintain a minimum amount of capital in accordance with the standard):

(d) a condition that requires a specified amount or proportion of the licensed insurer's insurance business to relate to New Zealand policyholders (whether that amount or proportion is defined in terms of premium revenue, amount of insurance liability, a combination of premium revenue and amount of insurance liability, or in any other way):

(e) in the case of a licensed insurer that has not yet commenced carrying on insurance business in New Zealand, either or both of the following:

(i) a condition that specifies the time period within which the insurer must commence carrying on insurance business in New Zealand:

(ii) a condition that specifies an amount of insurance business in New Zealand that the insurer must have within a specified period (whether that amount is defined in terms of premium revenue, amount of insurance liability, a combination of premium revenue and amount of insurance liability, or in any other way):

(f) a condition that requires the licensed insurer or the directors of the insurer (or both) to certify that 1 or more of the following have been complied with (being certification that is given at the time or times and in the manner specified in the condition):

(i) any conditions of the licence:

(ii) any requirements of this Act or the regulations:

(iii) any requirements of any other enactment imposed on the insurer as a licensed insurer (for example, financial reporting obligations):

(g) a condition that requires a certificate given under paragraph (f) to be verified by the appointed actuary or another person specified in the condition (being verification that is given at the time or times and in the manner specified in the condition):

(h) any other prescribed conditions or conditions that relate to prescribed matters.

(3) Subsection (2)(c) does not limit subsection (2)(b).

(4) A condition under subsection (2)(b) or (c) may—

(a) specify the amount of the solvency margin; or

(b) set the level of the solvency margin by means of a ratio, percentage of another amount, or in any other way.

Section 21(2)(f): replaced, on 4 September 2013, by section 4 of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

22 Bank may modify conditions of licence

(1) The Bank may, at any time after a licence is issued, by notice in writing to the licensed insurer,—

(a) impose conditions of licence (whether or not the licence is already subject to conditions); or

(b) vary, remove, add to, or substitute any conditions of licence.

(2) Section 21(2) to (4) apply for the purposes of subsection (1) with all necessary modifications.

(3) The Bank must not exercise a power referred to in subsection (1) unless—

(a) the Bank gives the licensed insurer not less than 7 days' notice in writing of the Bank's intention to do so; and

(b) the notice contains, or is accompanied by, a statement of the Bank's reasons; and

(c) the licensed insurer has a reasonable opportunity to make submissions to the Bank; and

(d) the Bank has regard to those submissions.

23 Offence to fail to comply with conditions of licence

A licensed insurer commits an offence if it fails to comply with a condition of its licence and is liable, on conviction, to a fine not exceeding $500,000.

Section 23: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

24 Licensed insurer must report likely failure to comply with solvency margin imposed under licence conditions

(1) If a licensed insurer has reasonable grounds to believe that a failure to maintain a solvency margin is likely to occur at any time within the next 3 years, the insurer must report the likely failure to the Bank as soon as is reasonably practicable.

(2) A licensed insurer that fails to comply with subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding $500,000.

Section 24(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Notification of decision

25 Bank must notify applicant of decision and give notice on register

(1) The Bank must, after it has made a decision on an application for a licence, give written notice of the decision to the applicant.

(2) If the Bank refuses to issue a licence, the notice must contain, or be accompanied by, a statement of the Bank's reasons for the refusal.

(3) The Bank must give notice of the issue of a licence on the register kept under section 54A.

Section 25 heading: amended, on 4 September 2013, by section 5(1) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 25(3): replaced, on 4 September 2013, by section 5(2) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Bank must be notified before control is obtained and before corporate form is changed

26 Bank must be notified before control is obtained

(1) Subsection (2) applies if, as a result of a proposed transaction, a person (**person A**)—

(a) would become a holding entity of a licensed insurer; or

(b) would obtain control of a licensed insurer.

(2) Person A must, before the proposed transaction takes effect, notify the Bank of the proposed transaction and include in its notification an explanation as to how this subsection applies to the person.

(3) Subsection (2)—

(a) applies regardless of whether person A is a party to the proposed transaction; but

(b) does not apply to person A if—

(i) person A does not know of the proposed transaction before it takes effect; or

(ii) a specified person notifies the Bank of the proposed transaction under subsection (2).

(4) In this section and sections 28 and 30,—

(a) **proposed transaction** means a transaction or an arrangement that is proposed to take effect after the licence is issued to the licensed insurer referred to in subsection (1):

(b) person A has **control** of an insurer if person A—

(i) has the power, directly or indirectly, to exercise, or control the exercise of, 50% or more of the voting rights in the insurer; or

(ii) has, together with 1 or more specified persons, the power, directly or indirectly, to exercise, or control the exercise of, 50% or more of the voting rights in the insurer:

(c) **specified person**, in relation to person A, means—

(i) a person who is acting or will act jointly or in concert with person A in respect of exercising, or controlling the exercise of, the voting rights in the licensed insurer referred to in subsection (1); or

(ii) a person who acts, or is accustomed to act, in accordance with the wishes of person A.

27 Bank must be notified before corporate form is changed

If a licensed insurer intends or proposes to change its corporate form (for example, as a result of demutualisation), the insurer must notify the Bank of that matter before the change takes place.

28 Bank must consider whether it is still satisfied as to licensing matters

(1) The Bank must, after being notified under section 26 or 27, consider whether, if the proposed transaction takes effect or the corporate form is changed, the Bank would still be satisfied of the matters in section 19(1)(a) to (m) (which are the matters that the Bank must be satisfied of before an applicant is entitled to be issued with a licence).

(2) Each of the following persons must, within the time and in the manner specified by the Bank, provide to the Bank the information that is required by the Bank to assist it in acting under subsection (1):

(a) in the case of section 26, the person that notified the Bank and the licensed insurer:

(b) in the case of section 27, the licensed insurer.

(3) The Bank must, within 20 working days after receiving under subsection (2) all of the information that is reasonably required by the Bank to assist it in acting under subsection (1), give written notice of its decision under that subsection together with a statement of the Bank's reasons to,—

(a) in the case of section 26, the person that notified the Bank and the licensed insurer:

(b) in the case of section 27, the licensed insurer.

29 Offence to fail to notify or provide information

A licensed insurer or other person that fails to comply with section 26, 27, or 28(2) commits an offence and is liable, on conviction, to a fine not exceeding $500,000.

Section 29: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Cancellation of licence

30 Cancellation of licence

(1) The Bank may cancel a licence if the Bank is satisfied that—

(a) 1 or more of the following applies:

(i) the licensed insurer has asked the Bank, by written notice, to cancel its licence:

(ii) the licensed insurer has ceased to carry on insurance business in New Zealand:

(iii) the licensed insurer has breached a condition of the licence that requires it to commence carrying on insurance business in New Zealand:

(iv) there has been a failure to comply with section 26, 27, or 28(2) in respect of the licensed insurer (whether the failure is by a person referred to in section 26(2) or the insurer):

(v) the Bank has given a notice under section 28(3) that, if a proposed transaction takes effect or the corporate form is changed, it would no longer be satisfied of 1 or more of the matters in section 19(1)(a) to (m), and (whether before or after that notice is given) the proposed transaction takes effect or the corporate form is changed:

(vi) the licensed insurer has been deregistered under section 18 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and has not been reregistered under that Act (whether under section 22 of that Act or otherwise) within the 3-month period from the date of deregistration:

(vii) the licensed insurer is a company that has been removed from the New Zealand register (within the meaning of the Companies Act 1993):

(viii) the licensed insurer is an overseas company that has been removed from the overseas register (within the meaning of the Companies Act 1993):

(ix) the licensed insurer has been liquidated, wound up, or dissolved or has otherwise ceased to exist; and

(b) the licensed insurer has no liabilities under any contracts of insurance in respect of insurance business carried on by it in New Zealand.

(2) The Bank must not, in the case of subsection (1)(a)(ii) to (vi), cancel a licence unless—

(a) the Bank sends notice of the Bank's intention to cancel the licence to the insurer; and

(b) the notice contains, or is accompanied by, a statement of the Bank's reasons; and

(c) the notice specifies the date by which an objection to the cancellation must be delivered to the Bank (which must be not less than 20 working days after the date of the notice); and

(d) the Bank has regard to any objections that are received before the close of the date specified under paragraph (c).

(3) The Bank must, as soon as practicable after cancelling a licence, give—

(a) public notice of the cancellation; and

(b) in the case of a cancellation under subsection (1)(a)(i) to (vi), written notice of the cancellation to the insurer.

(4) In this section, **public notice** means that the notice is published—

(a) in 1 or more daily newspapers circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and

(b) on the Bank's Internet site.

Section 30(2): amended, on 4 September 2013, by section 6 of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

31 Assignment of liabilities to enable cancellation

(1) If the Bank considers that it would, under section 30, cancel a licence if the licensed insurer had no liabilities under any contracts of insurance in respect of insurance business carried on by it in New Zealand, the Bank may direct the insurer to arrange, subject to the Bank's approval under section 32, to assign its liabilities to 1 or more other licensed insurers.

(2) The licensed insurer must—

(a) effect the assignment of the liabilities within the period specified in the direction; and

(b) comply with any conditions relating to the assignment that are specified by the Bank in the direction; and

(c) comply with section 32(4).

(3) Subsections (1) and (2) have effect despite section 44(1) (which relates to transfers and amalgamations with the Bank's approval).

(4) The licensed insurer may, in connection with an assignment under this section, assign any rights or benefits in connection with contracts of insurance in respect of the insurance business carried on in New Zealand by the insurer (subject to any conditions specified by the Bank in the direction).

(5) A licensed insurer commits an offence if it fails to comply with this section and is liable, on conviction, to a fine not exceeding $500,000.

Section 31(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

32 Bank's approval of assignment

(1) A licensed insurer must not assign its liabilities under section 31, and a purported assignment under that section is of no effect, unless the assignment is approved by the Bank under subsection (2).

(2) The Bank may only approve a proposed assignment of an insurer's liabilities under section 31 if the Bank is satisfied that the assignment is appropriate, having regard to—

(a) the interests of the insurer's policyholders; and

(b) the interests of the policyholders of the licensed insurer or insurers to whom the liabilities are to be assigned; and

(c) any other matter the Bank considers relevant.

(3) The approval must be in writing and may be made subject to specified conditions.

(4) If the Bank approves an assignment, the insurer must—

(a) comply with the conditions of the approval; and

(b) give reasonable notice (in writing) of the assignment to the insurer's policyholders; and

(c) give the Bank such written evidence of the assignment as the Bank reasonably requires.

33 Effect of assignment

If a licensed insurer (the **first insurer**) accepts an assignment of liabilities from another licensed insurer (the **second insurer**) that is approved by the Bank under section 32, the following are taken to have occurred:

(a) contracts of insurance in respect of which liability is accepted by the first insurer (the **transferring contracts**) are to be treated for all purposes as if each contract had been transferred by novation from the second insurer to the first insurer:

(b) a policyholder under a transferring contract is taken to have the same rights against the first insurer as the policyholder would have against that insurer had the person's contract of insurance been transferred by novation to the first insurer:

(c) the rights of the first insurer against policyholders under transferring contracts are the same as they would be had the transferring contracts been transferred by novation to the first insurer from the second insurer.

Fit and proper requirements

34 Licensed insurer must be subject to fit and proper policy for directors and relevant officers

(1) Every licensed insurer must—

(a) be subject to a written policy that governs the qualifications, requirements, and other criteria that a person must have or satisfy in order to be appointed, and to continue to hold a position, as a director or relevant officer of the insurer, being a policy for the purpose of ensuring that only fit and proper persons are appointed to, and continue to hold, those positions (a **fit and proper policy**); and

(b) take all practicable steps to comply with that policy.

(2) The fit and proper policy must clearly specify the qualifications, requirements, and other criteria for a particular position, including matters relating to a person's character, competence, and experience relative to the duties of the position.

(3) The qualifications, requirements, and other criteria for a particular position that are specified in the fit and proper policy must, in the manner specified in an applicable fit and proper standard, take into account the fit and proper matters specified in the fit and proper standard.

(4) The fit and proper policy must—

(a) comply with the prescribed requirements; and

(b) contain adequate provisions—

(i) to encourage any person to disclose information to the insurer or the Bank that may be relevant to a fit and proper assessment; and

(ii) for giving or obtaining any consents required for the collection and use of any information by the insurer to comply with the policy or section 37 and by the Bank for its powers and functions under this Act in connection with the policy.

(5) A licensed insurer must obtain the Bank's approval before its fit and proper policy is amended in a material way.

(6) A licensed insurer that fails to comply with this section commits an offence and is liable, on conviction, to a fine not exceeding $500,000.

Section 34(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

35 Group fit and proper policy

(1) If the licensed insurer is part of a group of insurers, the fit and proper policy that the insurer is required to be subject to may, at the option of the insurer, be a fit and proper policy that applies to the insurer and 1 or more other members of that group (a **group policy**).

(2) However, if the group policy does not comply with the requirements of section 34(1) to (4) in any respect, the licensed insurer must prepare a supplementary document that, when taken together with the group policy, ensures that the requirements of section 34(1) to (4) are complied with (in which case the insurer's fit and proper policy must be taken to be the group policy together with the supplementary document).

36 Fit and proper standards

(1) The Bank may issue fit and proper standards for the purposes of section 34(3) that—

(a) specify matters that are relevant to the consideration of whether a person is a fit and proper person to be appointed to, and continue to hold, a position as a director or relevant officer; and

(b) specify the manner in which those matters must be taken into account in respect of a fit and proper policy.

(2) A fit and proper standard may be expressed to apply in relation to—

(a) all licensed insurers or applicants; or

(b) a specified class or classes of licensed insurers or applicants; or

(c) 1 or more specified licensed insurers or applicants.

(3) A fit and proper standard may—

(a) have general or specific application:

(b) differ according to differences in time or circumstance.

(4) This section is subject to sections 233 to 235 (which provide for general provisions relating to standards).

Section 36(1): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 36(4): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

37 Licensed insurer must provide fit and proper certificate for new directors or relevant officers or if Bank requires certificate

(1) A licensed insurer must, no later than 20 working days after the appointment of a new director or relevant officer, provide to the Bank a certificate that complies with subsection (4) in respect of the new director or relevant officer.

(2) In addition, if the Bank has given a notice in writing to a licensed insurer that requires the insurer to provide to the Bank a certificate that complies with subsection (4) in respect of a specified director or relevant officer, the insurer must, within the time specified in the notice, comply with the requirement.

(3) Subsection (2) applies whether or not a certificate in respect of the director or officer has previously been provided under this section.

(4) The certificate must—

(a) specify the director's or relevant officer's full name, previous names (if any), and residential address; and

(b) in the case of subsection (1), specify the date of the appointment and the director's or relevant officer's date of birth; and

(c) state that, in the opinion of all directors of the licensed insurer after due inquiry by them, the director or relevant officer is, in accordance with its fit and proper policy, a fit and proper person to hold the relevant position; and

(d) contain, or be accompanied by, a certificate signed by the director or relevant officer that states that, in his or her opinion, he or she is, in accordance with the licensed insurer's fit and proper policy, a fit and proper person to hold the relevant position; and

(e) contain, or be accompanied by, a summary of information that is relevant to the consideration of whether the person satisfies the licensed insurer's fit and proper policy; and

(f) be signed on behalf of all the directors of the licensed insurer by at least 2 directors of the insurer (or, if the insurer has only 1 director, by that director); and

(g) be in the prescribed form (if any).

(5) Every licensed insurer that is required to provide a certificate to the Bank under this section must provide to the Bank any further information that is required by the Bank to assist it in considering whether the director or relevant officer is a fit and proper person to hold the relevant position.

(6) A licensed insurer commits an offence if the insurer fails to comply with this section and is liable, on conviction, to a fine not exceeding $500,000.

Section 37(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

38 Bank may exempt overseas insurers from compliance with section 37(1)

(1) The Bank may, by notice to an overseas insurer, exempt the insurer from compliance with section 37(1) to the extent that it relates to the directors of the insurer.

(2) The Bank must, before granting an exemption, be satisfied that the law or regulatory requirements of the home jurisdiction of the insurer—

(a) provide for the assessment by an overseas supervisor of whether the persons who are appointed as directors of the insurer are fit and proper persons to be appointed to that position; and

(b) provide for the removal of a person from being a director of the insurer if the overseas supervisor considers that the person is not a fit and proper person to hold the relevant position.

(3) The matters in subsection (2) must be treated as being satisfied in respect of an overseas insurer that is incorporated in a jurisdiction that is prescribed for the purposes of this subsection.

(4) This section is subject to section 232 (which provides for general provisions relating to exemptions).

39 Power to remove directors and relevant officers

(1) This section applies if the Bank, after having regard to the fit and proper matters specified in an applicable fit and proper standard, has reasonable grounds to believe that a director or relevant officer of a licensed insurer is not a fit and proper person to hold the relevant position.

(2) If this section applies, the Bank may remove the director or relevant officer from the relevant position from a date specified by the Bank.

(3) If the Bank acts under subsection (2), the Bank may give a direction that the director or relevant officer may not be reappointed as a director or relevant officer of the licensed insurer—

(a) at any time; or

(b) for a period specified by the Bank; or

(c) until 1 or more things specified by the Bank occur (for example, the director or relevant officer receives a specified qualification).

(4) This section may apply regardless of whether or not the director or relevant officer is, in accordance with the licensed insurer's fit and proper policy, a fit and proper person to hold his or her position.

(5) This section does not apply in respect of a director of an overseas insurer.

(6) This section has effect despite any contract, employment agreement, enactment, or rule of law, or the terms of the constitution of a licensed insurer.

40 How power to remove is exercised

(1) The Bank must not exercise a power referred to in section 39 unless—

(a) the Bank gives the licensed insurer and the director or relevant officer not less than 7 days' notice in writing of the Bank's intention to do so; and

(b) the notice contains, or is accompanied by, a statement of the Bank's reasons; and

(c) the licensed insurer and the director or relevant officer each have a reasonable opportunity to make submissions to the Bank; and

(d) the Bank has regard to those submissions.

(2) The Bank must exercise the powers conferred by section 39 by giving notice in writing to—

(a) the licensed insurer; and

(b) the director or the relevant officer; and

(c) in the case of a director, the Registrar of Companies.

(3) A notice given under subsection (2)(c) is sufficient compliance with section 159 of the Companies Act 1993.

(4) A notice given under this section may be amended, revoked, or replaced in the same way as it may be given.

41 Former director or relevant officer must not accept reappointment in breach of direction

(1) If a person has been removed from a particular position under section 39, the person may not accept reappointment to the position in breach of a direction given under section 39(3).

(2) A person commits an offence if the person fails to comply with subsection (1) and is liable, on conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both).

Section 41(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

42 Appeals from Bank's decision

(1) A director or relevant officer or former director or relevant officer who is the subject of a decision of the Bank under section 39 may appeal to the High Court against the decision.

(2) An appeal is by way of rehearing.

(3) A decision against which an appeal is lodged continues in force pending the determination of the appeal unless the High Court orders otherwise.

43 Appeal to Court of Appeal on question of law

(1) Any party to an appeal under section 42 who is dissatisfied with any determination of the High Court in the proceedings as being erroneous in point of law may, with the leave of the High Court or, if the High Court refuses leave, with the leave of the Court of Appeal, appeal to the Court of Appeal against the determination; and section 56 of the Senior Courts Act 2016 applies to any such appeal.

(2) In determining whether to grant leave to appeal, the Court of Appeal must have regard to whether the question of law involved in the appeal is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for its decision.

(3) The Court of Appeal, in granting leave, may impose the conditions that it thinks fit, whether as to costs or otherwise.

(4) The decision of the Court of Appeal on any application for leave to appeal, or on an appeal under this section, is final.

Section 43(1): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Transfers and amalgamations

44 Transfers and amalgamations must be approved

(1) A licensed insurer must obtain the written approval of the Bank before—

(a) giving effect to a transaction that involves,—

(i) in the case of an overseas insurer, the transfer of all or part of the insurer's New Zealand insurance business to another person; or

(ii) in the case of any other insurer, the transfer of all or part of the insurer's insurance business to another person; or

(b) the insurer amalgamates with another person (whether it occurs under Part 13 of the Companies Act 1993 or any other law of similar effect that results in 2 or more entities amalgamating and continuing as 1 entity).

(2) For the purposes of sections 45 to 53,—

amalgamated entity means the single entity that is proposed to result from and continue after a proposed amalgamation that requires approval under this section

transferee means the person to whom all or part of the licensed insurer's insurance business is proposed to be transferred under a proposed transfer that requires approval under this section.

(3) A licensed insurer commits an offence if—

(a) the insurer fails to comply with subsection (1); or

(b) in the case of the Bank refusing to give its approval under subsection (1), the insurer takes any further steps after the refusal under the Companies Act 1993 or any other enactment to give effect to the proposed transfer or amalgamation.

(4) Every licensed insurer that commits an offence under subsection (3) is liable, on conviction, to a fine not exceeding $1,000,000.

(5) This section does not apply in respect of a transfer or amalgamation under section 31, sections 164 to 167, subpart 4 of Part 4, or section 207(5).

Section 44(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

45 Request for approval

(1) A request for the Bank to give its approval under section 44 must be—

(a) made in the manner that is specified by the Bank; and

(b) accompanied by payment of the prescribed fee for the request (if any).

(2) A joint request may be made by 2 or more licensed insurers that are parties to the proposed transfer or amalgamation.

(3) A licensed insurer that makes a request and every other party to the proposed transfer or amalgamation must provide to the Bank the information that is required by the Bank to assist it in determining whether to give its approval.

46 Actuarial or other report on transfer or amalgamation proposal

(1) The Bank may arrange for an independent actuary or any other suitably qualified person to make a written report on a proposed transfer or amalgamation.

(2) A licensed insurer that makes a request and every other party to the proposed transfer or amalgamation must provide to the actuary or other person referred to in subsection (1) the information that is required by the actuary or person to assist him or her in preparing the report.

47 Costs of report

(1) A licensed insurer that makes a request under section 45 is liable to pay to the Bank the reasonable costs incurred by the Bank in obtaining the report or reports under section 46 (and in the case of a joint application, the licensed insurers are jointly and severally liable to pay those costs).

(2) An amount payable under subsection (1) is recoverable as a debt due to the Bank in any court of competent jurisdiction.

48 Bank must have regard to certain matters in considering request

In considering a request made under section 45, the Bank must have regard to the following matters:

(a) the ability of the transferee, or the amalgamated entity, to comply with subpart 2 and, if applicable, subpart 3:

(b) the interests of the policyholders of the insurers that are parties to the proposed transfer or amalgamation:

(c) any other matter the Bank considers relevant.

49 Bank's decision on approval

(1) The Bank may, after considering a request made under section 45, by notice in writing to the licensed insurer or insurers,—

(a) give its approval unconditionally or subject to any conditions that the Bank may impose under subsection (3); or

(b) refuse to give its approval.

(2) The Bank must give the notice under subsection (1) within 20 working days after receiving both of the following:

(a) all of the information under section 45(3) that is reasonably required by the Bank to assist it in determining whether to give its approval:

(b) all reports that the Bank has arranged to receive under section 46 in respect of the proposed transfer or amalgamation.

(3) The approval may be subject to any of the following conditions:

(a) conditions that relate to any of the matters referred to in section 20 (which relates to carrying on business in a prudent manner), including any matters prescribed by regulations made for the purposes of section 20(2)(g):

(b) a condition that requires a specified amount or proportion of the transferee's or amalgamated entity's insurance business to relate to New Zealand policyholders (whether that amount or proportion is defined in terms of premium revenue, amount of insurance liability, a combination of premium revenue and amount of insurance liability, or in any other way):

(c) a condition that requires a licensed insurer or the directors of a licensed insurer (or both) to certify that any conditions have been complied with (being certification that is given at the time or times and in the manner specified in the condition):

(d) any other prescribed conditions or conditions that relate to prescribed matters.

(4) If the Bank refuses to give its approval, it must give a notice to the licensed insurer or insurers that contains a statement of its reasons.

50 Offence to fail to comply with conditions of approval

A licensed insurer commits an offence if it fails to comply with a condition of the approval imposed under section 49 and is liable, on conviction, to a fine not exceeding $500,000.

Section 50: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

51 Requirement for approval is in addition to requirements under other enactments

Sections 44 to 50 do not limit any other enactment that must be complied with in order to give effect to a proposed transfer or amalgamation that requires approval under section 44 (for example, in the case of amalgamating companies, the requirements of Part 13 of the Companies Act 1993).

52 Transfer or amalgamation not invalidated

Nothing in sections 44 to 51 invalidates any transfer or amalgamation made without the written approval of the Bank.

53 Effect of assignment for purposes of approved transfer

(1) If the Bank approves a transfer under section 44 and, for the purposes of the transfer, a licensed insurer (the **first insurer**) accepts an assignment of liabilities from another licensed insurer (the **second insurer**), the following are taken to have occurred:

(a) contracts of insurance in respect of which liability is accepted by the first insurer (the **transferring contracts**) are to be treated for all purposes as if each contract had been transferred by novation from the second insurer to the first insurer:

(b) a policyholder under a transferring contract is taken to have the same rights against the first insurer as the policyholder would have against that insurer had the person's contract of insurance been transferred by novation to the first insurer:

(c) the rights of the first insurer against policyholders under transferring contracts are the same as they would be had the transferring contracts been transferred by novation to the first insurer from the second insurer.

(2) An agreement between the first insurer and the second insurer may, with the Bank's approval, allocate liabilities in respect of the transferring contracts (and that agreement is binding on the first insurer, the second insurer, and the policyholders under those contracts).

(3) Subsection (1) is subject to subsection (2).

Publication of policies

[Repealed]

Heading: repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

54 Publication of policies

[Repealed]

Section 54: repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Register

Heading: inserted, on 4 September 2013, by section 7 of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

54A Register

(1) The Bank must keep a public register of licensed insurers.

(2) The Bank must determine the form of the register and may amend the form as it considers necessary.

(3) The register must include—

(a) the name of each licensed insurer; and

(b) the current financial strength rating of each licensed insurer (unless the insurer is not required to have such a rating); and

(c) any other prescribed information.

(4) The Bank must take all reasonable steps to ensure that the information contained in the public register is available to members of the public at all reasonable times.

Compare: 1989 No 157 s 69

Section 54A: inserted, on 4 September 2013, by section 7 of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Subpart 2—Prudential regulation of insurers

Solvency standards

55 Bank may issue solvency standards

(1) The Bank may issue solvency standards for the purposes of this Act.

(2) A solvency standard may be expressed to apply in relation to—

(a) all licensed insurers or applicants; or

(b) a specified class or classes of licensed insurers or applicants; or

(c) 1 or more specified licensed insurers or applicants.

(3) A solvency standard may—

(a) have general or specific application:

(b) differ according to differences in time or circumstance.

(4) The Bank must, before issuing a solvency standard, have regard to relevant overseas standards for the purpose of ensuring that the solvency standard to be issued by the Bank (the **proposed standard**) does not apply, in respect of a particular insurer, in an unreasonable manner (as compared to other insurers) as a result of the insurer being incorporated in New Zealand or some other jurisdiction.

(5) In subsection (4), **relevant overseas standards** means standards relating to solvency or capital that—

(a) relate to matters that are the same as, or similar to, those that are covered by the proposed solvency standard; and

(b) apply to insurers in the home jurisdictions of the overseas insurers to which the proposed solvency standard will apply.

(6) This section is subject to sections 233 to 235 (which provide for general provisions relating to standards).

Section 55(1): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 55(6): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

56 Matters that may be contained in solvency standards

A solvency standard may prescribe 1 or more of the following matters:

(a) for the purposes of sections 19(1)(f) and 21(2)(b) and (c),—

(i) the minimum amount of capital that an insurer must hold and maintain:

(ii) the methods for determining or calculating the amount of capital that an insurer must hold and maintain (whether by reference to a specified formula, framework, or amount, a combination of specified formulae, frameworks, or amounts, or otherwise):

(b) the methods for determining or calculating a solvency margin for the purposes of a condition of a licence (whether by reference to a specified formula, framework, or amount, a combination of specified formulae, frameworks, or amounts, or otherwise):

(c) the methods for determining whether, and the extent to which, a solvency margin is being maintained:

(d) requirements relating to reports about the financial condition of a licensed insurer and other reports relating to the solvency of the licensed insurer (including requirements relating to the information that must be contained in the reports, who must prepare the reports, how often the reports must be prepared, other matters concerning the preparation of reports, to whom the reports must be provided, and when the reports must be provided):

(e) for the purposes of any of paragraphs (a) to (d),—

(i) the methods for estimating or valuing the assets or liabilities (or both) of an insurer:

(ii) the assets of an insurer that must be disregarded (in whole or in part) for the purposes of estimating or valuing the assets of an insurer:

(f) for the purposes of any of paragraphs (a) to (d), any other matters relating to the assessment, or disclosure, of—

(i) whether, and the extent to which, the value of an insurer's assets exceeds the value of its liabilities (including contingent liabilities); or

(ii) whether an insurer is able to pay its liabilities as they become due in the normal course of business; or

(iii) other matters relating to the financial condition or solvency of an insurer:

(g) requirements relating to the disclosure of information relating to the financial condition or solvency of a licensed insurer to 1 or more of the following (including prescribing to whom and when disclosure must be made and the manner of disclosure):

(i) the Bank:

(ii) the insurer's policyholders or any class of those policyholders:

(iii) the public or any class of the public:

(h) matters relating to the manner in which a review of actuarial information under section 77 is to be carried out (including specifying information as being actuarial information for the purposes of that section).

57 Offence to fail to comply with reporting and disclosure requirements

A licensed insurer commits an offence if it fails to comply with any of the requirements of a solvency standard under section 56(d) or (g) that apply to the insurer and is liable, on conviction, to a fine not exceeding $500,000.

Section 57: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

58 Incorporation by reference

[Repealed]

Section 58: repealed, on 4 September 2013, by section 8 of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

59 Bank may exempt overseas insurers from compliance

(1) The Bank may, by notice to an overseas insurer, exempt the insurer from compliance with a solvency standard or a part of a solvency standard.

(2) The Bank must, before granting an exemption, be satisfied that—

(a) the overseas insurer is required, under the law or regulatory requirements of the home jurisdiction of the insurer, to comply with standards or requirements that relate to the same or similar matters that are covered by the solvency standard or the part of a solvency standard to which the exemption relates (the **overseas standards or requirements**); and

(b) the overseas standards or requirements—

(i) cover the New Zealand business of the overseas insurer; and

(ii) are, in terms of achieving the purposes of this Act, at least as satisfactory as the solvency standard or the part of a solvency standard to which the exemption relates; and

(c) the nature and extent of prudential supervision that applies to the overseas insurer in respect of the overseas standards or requirements is, in terms of achieving the purposes of this Act, at least as satisfactory as the nature and extent of prudential supervision that applies to insurers incorporated in New Zealand in respect of the solvency standard or the part of a solvency standard to which the exemption relates.

(3) This section is subject to section 232 (which provides for general provisions relating to exemptions).

Financial strength ratings

60 Licensed insurer must have current financial strength rating

(1) A licensed insurer must have a current financial strength rating that is given by an approved rating agency.

(2) Subsection (1) does not apply to—

(a) a licensed insurer that is included in a class of insurers that is the subject of an exemption under section 238(1)(a)(ii); or

(b) a licensed insurer if the only kind of insurance business carried on by the insurer in New Zealand is reinsurance business; or

(c) a captive insurer; or

(d) an insurer that is exempted under subsection (2A).

(2A) The Bank may, by notice to a licensed insurer, exempt the insurer from compliance with subsection (1) if the Bank is satisfied that the insurer has ceased to enter into new contracts of insurance as an insurer.

(2B) Subsection (2A) is subject to section 232 (which provides for general provisions relating to exemptions).

(3) Sections 63 to 71 do not apply to—

(a) a reinsurer in respect of its reinsurance business; or

(b) a captive insurer.

(4) A licensed insurer commits an offence if it fails to comply with this section and is liable, on conviction, to a fine not exceeding $1,000,000.

Section 60(2)(c): replaced, on 4 September 2013, by section 9(1) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 60(2)(d): inserted, on 4 September 2013, by section 9(1) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 60(2A): inserted, on 4 September 2013, by section 9(2) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 60(2B): inserted, on 4 September 2013, by section 9(2) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 60(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

61 Financial strength rating must refer to overseas policyholder preference

(1) If an overseas policyholder preference may apply in respect of a licensed insurer that is an overseas insurer, the financial strength rating of the insurer must, in the prescribed circumstances and in the prescribed manner, contain, or be accompanied by, a reference to the overseas policyholder preference when the financial strength rating is disclosed under any of sections 64 and 67 to 69.

(2) If subsection (1) is not complied with, the licensed insurer must be treated as having failed to comply with section 64, 67, 68, or 69 (as the case may be).

62 Bank may approve rating agencies

(1) The Bank may approve a person as a rating agency for the purposes of this Act.

(2) In deciding whether to approve a person as a rating agency, the Bank must have regard to the following:

(a) the independence of the rating agency:

(b) the adequacy of resources available to the rating agency:

(c) the credibility and objectivity of the rating agency's methodology:

(d) the consistency and comparability of the rating agency's ratings when assessed against ratings industry practice:

(e) the adequacy of the rating agency's disclosure of information, including information about its processes, experience, and ownership:

(f) relevant international standards, codes, and recommended practices relating to the ratings industry.

(3) The Bank may, at any time, review the approval of a person as a rating agency, and in conducting the review the Bank must have regard to the matters in subsection (2).

(4) If, after conducting the review, the Bank considers that the person should no longer be an approved rating agency, it may revoke the approval.

(5) A financial strength rating given to an insurer by an agency at a time when the agency was an approved rating agency does not cease to be a rating from an approved rating agency for the purposes of this Act by reason of the fact that the approval of that agency has expired or has been revoked.

(6) The Bank must publish and keep up to date a list of approved rating agencies on the Bank's Internet site at all reasonable times.

63 Licensed insurer must notify Bank of change in rating or credit watch warning

(1) A licensed insurer must, within 20 working days after receiving notice in writing that its financial strength rating has changed, deliver to the Bank a certificate by the approved rating agency of the new rating that also states the date on which it was given.

(2) A licensed insurer must, within 20 working days after receiving notice in writing that a credit watch warning has been given by an approved rating agency in respect of the insurer's financial strength rating, deliver to the Bank a certificate by the approved rating agency of the credit watch warning that also states the date on which it was given and the reasons for it.

(3) In this section, **credit watch warning** means any word, expression, or symbol used by an agency to indicate that the agency has an insurer under consideration with a view to a possible downgrading in a financial strength rating given to the insurer by the agency.

64 Disclosure of current rating to policyholder

(1) A licensed insurer that is required to comply with section 60(1) or that otherwise has a current financial strength rating given by an approved rating agency must, before entering into or renewing a contract of insurance with a New Zealand policyholder, disclose in writing to the policyholder—

(a) the insurer's current financial strength rating; and

(b) the name of the agency by which the rating was given; and

(c) the rating scale of which the rating referred to in paragraph (a) forms part.

(2) If an insurance intermediary, in arranging a contract of insurance or the renewal of a contract of insurance, discloses to the policyholder in writing and before the contract is entered into or renewed the matters referred to in subsection

(1) in relation to the proposed insurer, the insurer must be treated as having complied with that subsection.

(3) If it is not reasonably practicable for a licensed insurer or insurance intermediary, as the case may be, to disclose the matters referred to in subsection (1) in writing and before the contract is entered into or renewed, that subsection must be treated as having been complied with if—

(a) those matters (other than the rating scale) are disclosed to the policyholder orally before the contract is entered into or renewed; and

(b) those matters are disclosed to the policyholder in writing as soon as it becomes practicable to do so.

(4) For the purposes of this section, a matter is not to be taken as having been disclosed unless it is disclosed clearly and prominently.

(4A) If a contract of insurance is renewed, the licensed insurer is not required to comply with subsection (1) if—

(a) the contract is of a kind that is renewable more frequently than annually; and

(b) the information referred to in that subsection was disclosed in writing to the policyholder less than 12 months before the date of the renewal; and

(c) that information has not changed since the last disclosure was made to the policyholder under this section.

(5) A licensed insurer commits an offence if it fails to comply with this section and is liable, on conviction, to a fine not exceeding $100,000.

Section 64(4A): inserted, on 4 September 2013, by section 10 of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 64(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

65 Disclosure by insurers not required to be rated

(1) A licensed insurer that does not have a current financial strength rating as a result of section 60(2)(a) must, before entering into a contract of insurance or renewing a contract of insurance with a New Zealand policyholder, disclose in writing to the policyholder—

(a) that the insurer is not required to have a current financial strength rating; and

(b) the reason why it is not required to have a current financial strength rating.

(2) If an insurance intermediary, in arranging a contract of insurance or the renewal of a contract of insurance, discloses to the policyholder in writing and before the contract is entered into or renewed the matters referred to in subsection (1) in relation to the proposed insurer, the insurer must be treated as having complied with that subsection.

(3) If it is not reasonably practicable for a licensed insurer or insurance intermediary, as the case may be, to disclose the matters referred to in subsection (1) in writing and before the contract is entered into or renewed, that subsection must be treated as having been complied with if those matters are disclosed to the policyholder—

(a) orally before the contract is entered into or renewed; and

(b) in writing as soon as it becomes practicable to do so.

(4) For the purposes of this section, a matter is not to be taken as having been disclosed unless it is disclosed clearly and prominently.

(5) A licensed insurer commits an offence if it fails to comply with this section and is liable, on conviction, to a fine not exceeding $100,000.

Section 65(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

66 Policyholder may cancel if disclosure is not made

(1) If a contract of insurance is entered into or renewed, as the case may be, and section 64 or 65 (as the case may be) has not been complied with, the New Zealand policyholder may, within 20 working days after the contract is entered into or renewed, cancel the contract by notice in writing to the insurer.

(2) If a contract of insurance is cancelled under subsection (1), the New Zealand policyholder ceases to be liable for the payment of any premiums relating to the period commencing on the date on which the contract is cancelled and ending on the date on which the contract would have terminated, and any premiums paid by the policyholder to the insurer or any insurance intermediary that relate to that period must be repaid to the policyholder by the insurer.

67 Disclosure of rating on licensed insurer's Internet site

(1) If an Internet site that is maintained by, or on behalf of, a specified licensed insurer contains information or advertising about the insurer's insurance products, the insurer must ensure that the Internet site—

(a) states clearly and prominently—

(i) the insurer's current financial strength rating; and

(ii) the name of the agency by which the rating was given; and

(iii) the rating scale of which the rating referred to in subparagraph (i) forms part; or

(b) contains a prominent link to another Internet site that clearly and prominently states the matters specified in paragraph (a).

(2) In this section, a **specified licensed insurer** means a licensed insurer that is required to comply with section 60(1) or that otherwise has a current financial strength rating given by an approved rating agency.

68 Other advertising of ratings

(1) No advertisement that refers to the current financial strength rating, or to any part of the rating, of a licensed insurer may be distributed unless the advertisement also states clearly and prominently—

(a) the rating; and

(b) the name of the agency by which the rating was given; and

(c) that any scale of which the rating forms part is available for inspection at every office in New Zealand of the insurer.

(2) For the purposes of this section and section 70, an advertisement is distributed if it is communicated to the public in New Zealand (with a view to obtaining business from New Zealand policyholders) by newspaper, magazine, brochure, pamphlet, notice, circular, radio or television broadcast, film, the Internet, or other means.

(3) However, this section does not apply in relation to advertising on an Internet site that is maintained by, or on behalf of, a licensed insurer (but section 67 will apply).

69 Licensed insurer must give public notice of downgrade or notice to policyholders

(1) If, for the purposes of this Act, a licensed insurer is given a financial strength rating by an approved rating agency that is lower than the immediately preceding financial strength rating given to the insurer, the insurer must either,—

(a) within 10 working days after the lower rating is given, give public notice of the fact that the rating has been downgraded; or

(b) within 60 working days after the lower rating is given, give written notice of the fact that the rating has been downgraded to every New Zealand policyholder under a contract of insurance with the insurer.

(2) A notice given by a licensed insurer under subsection (1) may include any additional matter that the insurer considers is relevant to a proper understanding of the reasons for the downgrading of the rating.

(3) In this section, **public notice** means the notice is published—

(a) in 1 or more daily newspapers circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and

(b) on an Internet site maintained by, or on behalf of, the licensed insurer.

70 Licensed insurer must not disclose or advertise ratings from non-approved agencies

(1) A licensed insurer must not—

(a) disclose to a New Zealand policyholder a rating from a non-approved agency; or

(b) distribute an advertisement relating to any of the insurer's insurance products that refers to a rating from a non-approved agency.

(2) Subsection (1)(a) does not apply in respect of a disclosure to any policyholder that is a related party or an employee of the insurer.

(3) In this section, **rating from a non-approved agency** means, in relation to a licensed insurer, an assessment of its financial strength or creditworthiness that is in substance a financial strength rating or credit rating (whether called a rating, grading, scoring, ranking, or by any other name) that is issued or given by an agency that is not an approved rating agency.

71 Offence to fail to comply with disclosure obligations

A licensed insurer commits an offence if it fails to comply with any of sections 63 and 67 to 70 and is liable, on conviction, to a fine not exceeding $500,000.

Section 71: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Disclosure of overseas policyholder preference

72 Overseas insurer must disclose overseas policyholder preference

(1) If an overseas policyholder preference may apply in respect of a licensed insurer that is an overseas insurer, the insurer must disclose the nature and the extent of the overseas policyholder preference in the circumstances and in the manner that is prescribed.

(2) An overseas insurer commits an offence if it fails to comply with this section and is liable, on conviction, to a fine not exceeding $500,000.

Section 72(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Risk management

73 Licensed insurer must be subject to and comply with risk management programme

(1) A licensed insurer must be subject to a risk management programme and take all practicable steps to comply with that programme.

(2) The risk management programme must—

(a) be in writing; and

(b) set out the procedures that the licensed insurer will use for the effective identification and management of the following risks:

(i) insurance risk:

(ii) credit risk:

(iii) liquidity risk:

(iv) market risk:

(v) operational risk:

(vi) a prescribed type of risk (being a type of risk that is specified in the regulations to apply to the insurer or to a specified class of insurers that includes the insurer); and

(c) set out appropriate documentation and record-keeping requirements; and

(d) describe the steps that the licensed insurer will take to ensure that the programme remains current, which must include procedures for regular review of the programme to systematically identify and address deficiencies in the effectiveness of the programme; and

(e) be appropriate to the operations of the licensed insurer, having regard to the factors relevant to the risks referred to in paragraph (b) (for example, the size of the licensed insurer, its corporate structure (including its relationship with associated persons), its funding structure, the market sector in which it operates, and its business strategy).

(3) The Bank may issue, in the manner that the Bank thinks fit, guidelines relating to the risk categories referred to in subsection (2)(b) that must be covered by the risk management programme (being guidelines that do not have the force of law).

(4) A licensed insurer must obtain the Bank's approval before its risk management programme is amended in a material way.

(5) However, if it is not reasonably practicable for a licensed insurer to obtain the Bank's approval before its risk management programme is amended in a material way (for example, because the amendment needs to be made urgently),—

(a) the insurer may amend the risk management programme before obtaining the approval; but

(b) the amendment ceases to have effect if—

(i) the insurer fails to notify the Bank of the amendment within 5 working days after the amendment is made; or

(ii) the Bank does not give its approval to the amendment within 5 working days after being notified of the amendment.

Section 73(3): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

74 Group risk management programme

(1) If a licensed insurer is part of a group of insurers, the risk management programme that the insurer is required to be subject to may, at the option of the insurer, be a risk management programme that applies to the insurer and 1 or more other members of that group (a **group programme**).

(2) However, if the group programme does not comply with the requirements of section 73(2) in any respect, the licensed insurer must prepare a supplementary document that, when taken together with the group programme, ensures that

the requirements of section 73(2) are complied with (in which case the insurer's risk management programme must be taken to be the group programme together with the supplementary document).

75 Offence to fail to comply with risk management requirements

A licensed insurer commits an offence if it fails to comply with section 73 and is liable, on conviction, to a fine not exceeding $500,000.

Section 75: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Appointment of actuary and actuarial review

76 Requirement for licensed insurers to have appointed actuary

(1) A licensed insurer must have an actuary appointed by the insurer.

(2) A licensed insurer may, at any time, appoint an alternate actuary to act as the insurer's appointed actuary if the person appointed under subsection (1) is unable to act (whether by reason of absence or illness or otherwise).

(3) The licensed insurer must, within 6 weeks after a person stops being the appointed actuary under subsection (1) or within any longer period allowed by the Bank, appoint another person to be an appointed actuary (unless the person is replaced under section 149 or 192).

(4) A licensed insurer must not appoint a person under subsection (1) or (2) unless the person is an actuary and is, in accordance with the insurer's fit and proper policy, a fit and proper person to hold the position.

(5) A person appointed under subsection (1) or (2) may be an employee of the licensed insurer or engaged under a contract for services.

77 Review of actuarial information in, or used in the preparation of, financial statements

(1) A licensed insurer must ensure that the actuarial information contained in, or used in the preparation of, the financial statements or group financial statements of the insurer referred to in section 81(1) is reviewed by the appointed actuary.

(2) The licensed insurer must take all practicable steps to ensure that the review is completed, and the report referred to in section 78 in respect of the review is prepared, before the date on which the financial statements or group financial statements are required to be given to the Bank under section 81.

(3) The review must be carried out in accordance with an applicable solvency standard.

(4) For the purposes of this section and section 78, **actuarial information** means—

(a) information relating to an insurer's calculations of premiums, claims, reserves, dividends, insurance and annuity rates, and technical provisions; and

(b) information relating to assessments of the probability of uncertain future events occurring and the financial implications for the insurer if those events do occur; and

(c) information specified in an applicable solvency standard as being actuarial information for the purposes of this section.

(5) A licensed insurer commits an offence if it fails to comply with this section and is liable, on conviction, to a fine not exceeding $500,000.

Section 77(1): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 77(2): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 77(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

78 Appointed actuary's report

The appointed actuary's report in respect of a review under section 77 must state—

(a) the actuary's name; and

(b) the work done by the actuary; and

(c) the scope and limitations of the review; and

(d) the existence of any relationship (other than that of actuary) that the actuary has with, or any interests that the actuary has in, the licensed insurer or any of its subsidiaries; and

(e) whether the actuary has obtained all information and explanations that he or she has required; and

(f) whether, in the actuary's opinion and from an actuarial perspective,—

(i) the actuarial information contained in the financial statements and any group financial statements has been appropriately included in those statements (and if not, the respects in which it has been inappropriately included); and

(ii) the actuarial information used in the preparation of the financial statements and any group financial statements has been used appropriately (and if not, the respects in which it has been used inappropriately); and

(g) whether, in the actuary's opinion and from an actuarial perspective, the licensed insurer is maintaining the solvency margin that applies under a condition imposed under section 21(2)(b) (as at the balance date of the insurer); and

(h) in the case of a life insurer, whether, in the actuary's opinion and from an actuarial perspective, the life insurer is maintaining the solvency margins that apply in respect of its statutory funds under a condition imposed under section 21(2)(c) (as at the balance date of the insurer).

79 Provisions relating to auditor's report

A licensed insurer must ensure that the auditor's report that is prepared in respect of the insurer's financial statements or group financial statements is accompanied by the appointed actuary's report prepared under section 78 when—

(a) the auditor's report is delivered for registration or lodgement under any enactment; and

(b) the auditor's report is included in the insurer's annual report (in the case of an insurer that includes the auditor's report in its annual report).

Section 79: replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

80 Access to information

(1) A licensed insurer must ensure that any specified actuary has reasonable access to the accounting records and other documents of the insurer.

(2) A licensed insurer commits an offence if it fails to comply with subsection (1) and is liable, on conviction, to a fine not exceeding $1,000,000.

(3) A specified actuary is entitled to require from a director or an employee of the insurer such information and explanations as he or she thinks necessary for the performance of his or her duties as an actuary.

(4) A director or an employee commits an offence if he or she fails to comply with subsection (3) and is liable, on conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both).

(5) It is a defence to a director or an employee charged with an offence under subsection (4) if he or she proves that—

(a) he or she did not have the information required in his or her possession or under his or her control; or

(b) by reason of the position occupied by him or her or the duties assigned to him or her, he or she was unable to give the information or explanations required.

(6) In this section, **specified actuary**, in relation to a licensed insurer, means—

(a) the appointed actuary; or

(b) an actuary that is appointed by or under any of the provisions of this Act to perform or exercise any function, duty, or power in respect of the insurer.

Section 80(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 80(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Supply of financial statements

81 Financial statements and interim financial information must be given to Bank

(1) A licensed insurer must ensure that, on or before the date on which the financial statements or group financial statements of the insurer are required to be registered or lodged under any Act,—

(a) copies of those statements together with a copy of the auditor's report on those statements are given to the Bank; and

(b) a copy of the appointed actuary's report prepared under section 78 in respect of those statements is given to the Bank.

(2) A licensed insurer must, within 4 months after the end of the first half of each accounting period of the insurer,—

(a) prepare interim financial information for that half-period that complies with subsection (3); and

(b) ensure that copies of that information together with a copy of the auditor's report on the information (if any) are given—

(i) to the Bank; and

(ii) for registration to the Registrar of Companies if this is required by the regulations.

(3) The interim financial information must—

(a) comply with—

(i) generally accepted accounting practice; or

(ii) requirements specified by the Bank in a written notice given to the insurer (for example, regulatory requirements that apply in the insurer's home jurisdiction); and

(b) be audited if required by the regulations.

(4) If subsection (3)(a)(i) applies, the interim financial information must be interim financial statements prepared in respect of—

(a) the insurer if the insurer, at the end of the half-period, has no subsidiaries; or

(b) a group comprising the insurer and its subsidiaries in any other case.

(4A) *[Repealed]*

(5) This section is subject to any exemption under section 238(1)(a)(iii) in respect of any provision of this section.

(6) A licensed insurer commits an offence if it fails to comply with this section and is liable, on conviction, to a fine not exceeding $100,000.

Section 81 heading: amended, on 4 September 2013, by section 11(1) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 81(1): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 81(2): replaced, on 4 September 2013, by section 11(2) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 81(2)(b)(ii): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 81(3): replaced, on 4 September 2013, by section 11(2) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 81(4): replaced, on 4 September 2013, by section 11(2) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 81(4A): repealed, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 81(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Subpart 3—Statutory funds of life insurers

General requirements

82 Requirement that life insurer have statutory funds

(1) A life insurer must at all times have at least 1 statutory fund in respect of its life insurance business (but may have more statutory funds if it chooses to do so).

(2) A statutory fund is a fund that—

(a) is established in the records of a life insurer; and

(b) relates solely to the life insurance business of the life insurer or a particular part of that business.

(3) This subpart does not apply to a life insurer that is included in a class of insurers that is the subject of an exemption under section 238(1)(a)(iv).

83 Overview of requirements regarding statutory funds

(1) The principal requirements of this subpart in relation to statutory funds may be summarised as follows:

(a) all amounts received by a life insurer in respect of the business of a fund must be credited to the fund:

(b) all assets and investments related to the business of a fund must be included in the fund:

(c) all liabilities (including policy liabilities) of the life insurer arising out of the conduct of the business of a fund must be treated as liabilities of the fund:

(d) the assets of a fund are only available for expenditure related to the conduct of the business of the fund:

(e) funds may not be restructured or terminated without the approval of the Bank:

(f) profits and losses of a fund may only be dealt with in accordance with sections 112 to 115 and the associated regulations (the object of those sections and regulations being to ensure that such profits and losses are dealt with in a manner that protects the interests of policyholders and is consistent with prudent management of the fund).

(2) This section is only a guide to the general scheme and effect of this subpart.

84 Meaning of life policy

(1) For the purposes of this Act, each of the following constitutes a **life policy**:

(a) a contract of insurance that provides for the payment of money on the death of a person or on the happening of a contingency dependent on the termination or continuance of human life:

(b) a contract of insurance that is subject to payment of premiums for a term dependent on the termination or continuance of human life:

(c) a contract of insurance that provides for the payment of an annuity for a term dependent on the continuance of human life:

(d) a contract of insurance that is, by its terms, to be of more than 1 year's duration and under which a benefit (other than a health insurance benefit) is payable in the event of—

(i) the death, by accident or by some other cause stated in the contract, of the person whose life is insured (the **insured person**); or

(ii) injury to, or a disability of, the insured person as a result of accident or sickness; or

(iii) the insured person being found to have a stated condition or disease:

(e) a contract of insurance that constitutes an investment account contract:

(f) a contract of insurance that constitutes an investment-linked contract (within the meaning of section 98).

(2) However, subsection (1) is subject to subsections (3) and (4) and section 85.

(3) A contract that provides for the payment of a benefit on the death of a person is not a life policy if,—

(a) by the terms of the contract, the duration of the contract is to be not more than 1 year; and

(b) payment is only to be made in the event of—

(i) death by accident; or

(ii) death resulting from a stated condition or disease.

(4) A contract of insurance is not a life policy if it is of a class declared by the regulations not to be life policies.

(5) In subsection (1)(e), **investment account contract** means a contract that—

(a) provides for benefits to be paid—

(i) on death; or

(ii) on a specified date or specified dates or on death before the specified date, or the last of the specified dates, as the case may be; and

(b) provides for the benefits to be calculated by reference to units the value of which are guaranteed by the contract not to be reduced; and

(c) provides for the account to be increased (for example, by the amounts of premiums paid or interest payable).

(6) However, a contract is not an investment account contract if it provides for the account to be reduced otherwise than by the amounts of withdrawals by the person responsible for the payment of premiums or by the amounts of charges payable under the contract.

85 Composite policies

(1) This section applies to contracts of insurance that provide for both life insurance and non-life insurance.

(2) For the purposes of this subpart,—

(a) if, in relation to an insurance product line, the proportion of the premiums that relate to life insurance is less than 25%, each contract of insurance in the insurance product line must be treated as if it were not a life policy:

(b) if, in relation to an insurance product line, the proportion of the premiums that relate to non-life insurance is less than 25%, each contract of insurance in the insurance product line must be treated as if it were a life policy:

(c) in relation to each contract of insurance in any other insurance product line,—

(i) to the extent that the contract of insurance relates to life insurance, it must be treated as being a life policy that is separate from the parts of the contract that do not relate to life insurance; and

(ii) to the extent that the contract of insurance relates to non-life insurance, it must be treated as being a contract of insurance that is separate from the life policy referred to in subparagraph (i); and

(iii) for the purposes of subparagraphs (i) and (ii), the insurer must fairly apportion the premium between those separate contracts.

(3) The proportion of the premiums that relate to either life insurance or non-life insurance must be determined by the appointed actuary.

(4) For the purposes of subsection (3), the appointed actuary must determine the proportions on the basis of premiums allocated, or expected to be allocated, as at the time that the contracts of insurance are entered into.

(5) This section is subject to section 84(3) and (4).

(6) In this section,—

insurance product line means all contracts of insurance entered into by an insurer that have the same, or substantially the same, terms and conditions

life insurance means insurance of the kind described in section 84(1)(a) to (f)

non-life insurance means insurance that is not life insurance.

86 Interpretation in this subpart

(1) In this subpart, unless the context otherwise requires,—

life insurance business means—

(a) business that consists of either or both of the following:

(i) the issuing of life policies:

(ii) the undertaking of liability under life policies; and

(b) any business that relates to business referred to in paragraph (a) (including, without limitation, business relating to the investment, administration, and management of the assets of a statutory fund)

policy document means a document that sets out, or the documents that together set out, the terms of a contract that is a life policy, and includes an endorsement on such a document

policy liability, in relation to a life insurer, means—

(a) a liability that has arisen under a life policy:

(b) a liability that, subject to the terms and conditions of a life policy, will arise on the happening of an event, or at a time, specified in the policy.

(2) A reference in this subpart to the **business of a statutory fund** of a life insurer is a reference to the life insurance business to which the fund relates.

(3) For the purposes of this subpart,—

(a) a liability (including a policy liability) is taken to be referable to the business of a statutory fund if the liability is of a kind that, under this subpart, may be discharged out of the assets of the fund:

(b) an expense is taken to be referable to the business of a statutory fund if the expense is of a kind that, under this subpart, may be met out of the assets of the fund:

(c) a life insurer issues a life policy when the insurer enters into the contract that constitutes the policy.

87 Duty of life insurer in relation to statutory funds

(1) In the investment, administration, and management of the assets of a statutory fund, a life insurer—

(a) must comply with this subpart; and

(b) must give priority to the interests of policyholders of life policies referable to the fund.

(2) In the event of conflict between the interests of policyholders of life policies referable to a statutory fund and the interests of shareholders or members of a life insurer, the life insurer must give priority to the interests of policyholders of those policies over the interests of shareholders or members.

(3) An act or decision of a life insurer in relation to a statutory fund does not contravene subsection (1)(b) if, having regard to the circumstances existing at the time of the act or decision, it is reasonable to believe that the act or decision gives priority to the interests of policyholders of life policies referable to the fund.

(4) An investment by a life insurer is not ineffective merely because it is made in contravention of subsection (1)(b).

(5) A reference in subsections (1) to (3) to the interests of policyholders of life policies referable to a statutory fund is a reference to the interests of those persons viewed as a group.

(6) Nothing in subsection (1) prevents a life insurer doing anything that the life insurer is permitted by or under this subpart to do.

88 Notice to Bank when fund established

(1) If a life insurer establishes a statutory fund otherwise than under an approval given under section 109, the life insurer must give the Bank written notice of—

(a) the establishment of the fund; and

(b) the date on which the fund was established; and

(c) the nature of the life insurance business of the life insurer to which the fund relates; and

(d) any other prescribed matters.

(2) The notice must be given in the prescribed manner.

89 Life insurer must transfer assets on establishment

A life insurer must transfer to a statutory fund on its establishment assets of a value that is ascertained in the prescribed manner.

90 Assets of statutory fund

(1) For the purposes of this Act, the assets of a statutory fund at a particular time are the following:

(a) the balance of money represented by amounts credited to the fund in accordance with section 92:

(b) assets of the life insurer obtained as a result of the expenditure or application of money credited to the fund:

(c) investments held by the life insurer as a result of the expenditure or application of money credited to the fund:

(d) other money, assets, or investments of the life insurer transferred to the fund, whether under this subpart or otherwise.

(2) Assets or investments obtained by the application of assets (other than money) of a statutory fund are themselves assets of the fund.

(3) A life insurer must keep assets of a statutory fund distinct and separate from assets of other statutory funds and from all other money, assets, or investments of the life insurer.

(4) Nothing in this subpart is intended to constitute a life insurer or the directors of a life insurer a trustee or trustees of the assets of the statutory funds of the life insurer.

91 Identification of life policies referable to statutory fund

(1) A policy document must specify the statutory fund or statutory funds to which the life policy is referable.

(2) A policy document must not make provision inconsistent with section 82.

(3) A provision in a policy document that a life policy is referable to 2 or more statutory funds is not effective unless it specifies—

(a) the benefits under the policy that are to be provided out of each fund; and

(b) either—

(i) the proportion of the premium that is related to the benefits to be provided out of each fund and is to be credited to the fund; or

(ii) the way in which that proportion is to be calculated.

(4) Subsection (1) does not prevent a policy document being endorsed so as to change the statutory fund or funds to which the life policy is referable.

(5) If a life policy was issued before the commencement of this section and, since that commencement, the life insurer that issued the policy has given the policyholder written notice of the statutory fund or funds to which the policy is referable, this subpart has effect as if the notice were part of the policy document relating to the policy.

(6) During the period of 12 months beginning at the commencement of this section, subsection (1) does not apply to the policy document relating to a life policy issued before the commencement of this section.

92 Payments to statutory fund

The following amounts must be credited by a life insurer to a statutory fund:

(a) amounts that must, in accordance with the regulations, be credited to the statutory fund on its establishment:

(b) premiums payable under life policies referable solely to the fund:

(c) in the case of a life policy that is referable to the fund and to 1 or more other statutory funds, the proportion of the premium that, by virtue of a provision in the policy document, is to be credited to the fund:

(d) amounts paid to the life insurer in relation to a liability under section 105 or 107 in relation to the fund:

(e) income from the investment of assets of the fund:

(f) money paid to or by the life insurer to the credit of the fund under a judgment of a court relating to any matter concerning the business of the fund or any failure to comply with this subpart in relation to the fund:

(g) any other money received by the life insurer in connection with its conduct of the business of the fund.

93 Capital payments to statutory funds

(1) Nothing in this subpart prevents a life insurer from making a capital payment to a statutory fund.

(2) For the purposes of this subpart, a life insurer makes a capital payment to a statutory fund if it credits to the fund an amount that—

(a) is not required to be credited to the fund; and

(b) does not represent any part of the assets of another statutory fund.

94 Expenditure and application of statutory fund

(1) A life insurer must not apply, or deal with, assets of a statutory fund, whether directly or indirectly, except in accordance with this section.

(2) The assets of a statutory fund may only be applied by the life insurer—

(a) to meet liabilities (including policy liabilities) or expenses incurred for the purposes of the business of the fund; or

(b) for the making of investments in accordance with section 99; or

(c) for the purposes of a distribution under section 114 or 115.

(3) A life insurer must not mortgage or charge any of the assets of a statutory fund except to secure a bank overdraft for the purposes of the business of the statutory fund.

(4) A life insurer must not borrow money, for the purposes of the business of a statutory fund, by means of an unsecured borrowing if the result would be that the total amount of principal outstanding under unsecured borrowings for the

purposes of the business of the fund would exceed an amount ascertained in the prescribed manner.

(5) In subsection (4), **unsecured borrowing** does not include—

(a) a borrowing of money by means of a bank overdraft; or

(b) a borrowing of money by means of a prescribed arrangement.

(6) The assets of a statutory fund are not available to meet a liability of a life insurer under a contract of guarantee unless—

(a) the contract of guarantee was entered into by the life insurer in connection with an investment by the life insurer of assets of the fund; and

(b) the investment was made in accordance with this subpart.

(7) Nothing in this section applies to the transfer of assets from one statutory fund to another in accordance with sections 109 to 111, or section 114 or 115.

95 Prohibition of reinsurance between funds

(1) A life insurer fails to comply with this subpart if it engages in the practice of reinsurance between statutory funds of the life insurer.

(2) For the purposes of subsection (1), the practice of reinsurance between statutory funds consists of the following elements:

(a) part of the premium payable under a life policy referable to one statutory fund is credited to another statutory fund to which the policy is not referable (the **reinsuring fund**):

(b) a corresponding proportion of the liability under the life policy is treated as a liability for the discharge of which the assets of the reinsuring fund are available.

96 Effect of non-compliance with section 94: general

(1) A transaction (other than a transaction to which section 97 applies) entered into in contravention of section 94 is of no effect.

(2) Subsection (1) is subject to subsection (3) and section 87(4).

(3) The High Court, on application by a party to the transaction, may make an order declaring that the transaction is effective, and is to be taken always to have been effective, for all purposes.

(4) If the High Court is satisfied that the applicant entered into the transaction in good faith and without knowledge of the contravention of section 94, the court may have regard to any hardship that would be caused to the applicant if an order were not made under subsection (3).

(5) Subsection (4) does not limit the matters to which the High Court may have regard on an application under subsection (3).

97 Effect of non-compliance with section 94: certain classes of transactions

(1) A transaction that is included in a class of transactions declared by the regulations to be transactions to which this section applies is not ineffective merely because it was entered into in contravention of section 94.

(2) The High Court, on application by the Bank, may make an order declaring that a particular transaction entered into in contravention of section 94 is, and is to be taken always to have been, of no effect for any purpose.

(3) The High Court must not make an order under subsection (2) if it is satisfied that the effect of the order (if made) would be to prejudice the rights of any person in respect of, or arising out of, the transaction that have been acquired in good faith and without knowledge of the contravention.

98 Investment performance guarantee: limit of certain liabilities

(1) This section applies to a statutory fund if—

(a) the business of the fund includes the provision of investment-linked benefits; and

(b) any of the policies referable to the fund includes an investment performance guarantee.

(2) A life insurer must at all times comply with the restrictions on, and other requirements in respect of, the investment performance guarantee that are prescribed for the purposes of this section (if any).

(3) In this section,—

investment-linked benefits means benefits payable under an investment-linked contract

investment-linked contract means a contract—

(a) the principal object of which is the provision of benefits calculated by reference to units the value of which is related to the market value of a specified class or group of assets of the party by whom the benefits are to be provided; and

(b) that provides for benefits to be paid—

(i) on death; or

(ii) on a specified date or specified dates or on death before the specified date, or the last of the specified dates, as the case may be

investment performance guarantee, in relation to a life policy, means a provision that the amount payable under the policy at a particular time by way of investment-linked benefits is not less than an amount specified in, or calculated in accordance with, the policy.

99 Investment of statutory funds

(1) A life insurer may invest the assets of a statutory fund in any way that is likely to further the business of the fund.

(2) However, subsection (1) is subject to the following qualifications:

(a) nothing in this subpart authorises a life insurer to make an investment the life insurer would otherwise be prohibited from making:

(b) nothing in this subpart authorises a life insurer to make an investment the life insurer would not otherwise have the power to make:

(c) except with the approval of the Bank or otherwise in the prescribed circumstances, a life insurer must not invest assets of a statutory fund in an associated person that is not a subsidiary of the life insurer:

(d) a life insurer must not invest assets of a statutory fund, or keep assets of a statutory fund invested, in a subsidiary of the life insurer if the investment, or the retention of the investment, as the case requires, is prohibited by the regulations.

(3) The Bank's approval under subsection (2)(c) may be given—

(a) when the licence is issued to the life insurer or at any other time; and

(b) in relation to a particular investment or investments of a particular class.

(4) Nothing in subsection (2)(c) or (d) prevents a life insurer investing assets of a statutory fund, or keeping assets of a statutory fund invested, in ordinary voting shares of public issuers that are associated persons of the life insurer (whether or not they are subsidiaries) if the value of the assets of the fund so invested does not exceed a prescribed percentage of the value of all assets of the fund.

(5) A transaction is not ineffective merely because it involves a contravention of subsection (2)(c) or (d).

(6) Nothing in this section—

(a) prevents a life insurer from investing money of a statutory fund by way of deposit with—

(i) a registered bank (within the meaning of the Banking (Prudential Supervision) Act 1989); or

(ii) a bank that is authorised to accept deposits under the law of an overseas jurisdiction; or

(b) requires the approval of the Bank for such an investment.

(7) For the purposes of this subpart, an investment by way of a loan is to be taken to be made when the loan agreement is entered into.

(8) In this section, **public issuer** means a person who is a party to a listing agreement with, or whose securities are otherwise quoted on,—

(a) a licensed market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013); or

(b) a securities market that is authorised to operate in an overseas jurisdiction in accordance with the laws of that jurisdiction.

Section 99(6)(a)(i): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 99(8): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

100 Recording of restricted investments

(1) A life insurer must, in the prescribed manner, keep a record of its restricted investments.

(2) In this section, **restricted investment**—

(a) means any investment of assets of a statutory fund of a life insurer in a related party; but

(b) does not include an investment of assets of a statutory fund by way of deposit with a registered bank (within the meaning of the Banking (Prudential Supervision) Act 1989), even though the bank is a related party of the life insurer concerned.

Section 100(2)(b): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

101 Transfer of assets between funds

(1) A life insurer must not transfer an asset from one statutory fund to another statutory fund except in accordance with subsection (2), or sections 109 to 111, or section 114 or 115.

(2) A life insurer may transfer an asset from one statutory fund (the **losing fund**) to another statutory fund (the **gaining fund**) if—

(a) the life insurer transfers from the gaining fund to the losing fund an amount equal to the fair value of the asset; and

(b) in relation to the policyholders of life policies referable to the losing fund and the gaining fund, the transfer is fair and reasonable in all the circumstances.

(3) For the purposes of subsection (2), the **fair value** of an asset is the price a person could reasonably be expected to pay for the asset on a sale in which the seller and buyer were dealing with each other at arm's length.

(4) Subsection (1) does not prevent a liquidator doing anything authorised or required by or under any enactment.

102 Restriction on restructure or termination of statutory funds

(1) A life insurer must not change the statutory fund or funds to which a life policy is referable, or terminate a statutory fund, except in accordance with sections 91(4) and 111 or section 109 or 110.

(2) Subsection (1) does not prevent a liquidator doing anything authorised or required by or under any enactment.

103 Ascertainment of income and outgoings of statutory fund and providing for apportionment of income, outgoings, and liabilities

(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations that—

(a) specify what constitutes income of a statutory fund; and

(b) specify what constitutes outgoings of a statutory fund; and

(c) provide for the apportionment of amounts of income or outgoings or of liabilities so as to determine the part of the amount or portion of the liability that is related or referrable to the business of a statutory fund or to a category of business of a statutory fund.

(2) If regulations are made for the purposes of subsection (1), then, for the purposes of this subpart,—

(a) what constitutes income of a statutory fund must be determined in accordance with the regulations; and

(b) what constitutes outgoings of a statutory fund must be determined in accordance with the regulations; and

(c) what part of an amount of income or outgoings or portion of a liability that is related or referrable to the business of a statutory fund or to a category of business of a statutory fund must be determined in accordance with the regulations.

(3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 103(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

104 Life insurer must keep records of income and outgoings

A life insurer must keep records of the income and outgoings of each statutory fund of the insurer that properly record the affairs and transactions of the insurer in respect of those funds.

Duties and liabilities of directors, etc

105 Duty of directors in relation to statutory funds

(1) A director of a life insurer has a duty to the policyholders of life policies referable to a statutory fund of the life insurer to take reasonable care, and use due diligence, to see that, in the investment, administration, and management of the assets of the fund, the life insurer—

(a) complies with this subpart; and

(b) gives priority to the interests of policyholders of life policies referable to the fund.

(2) In the event of conflict between the interests of policyholders of life policies referable to a statutory fund and the interests of shareholders or members of a life insurer, a director's duty is to take reasonable care, and use due diligence, to see that the life insurer gives priority to the interests of policyholders of those policies over the interests of shareholders or members.

(3) A reference in subsection (1) or (2) to the interests of policyholders of life policies referable to a statutory fund is a reference to the interests of those persons viewed as a group.

(4) A director of a life insurer does not commit a breach of duty because of the doing of an act by the life insurer if the life insurer is permitted by or under this subpart to do the act.

(5) If, in respect of any act or omission of a life insurer, a director of the life insurer has failed to comply with subsection (1) and the act or omission of the life insurer results in a loss to a statutory fund of the life insurer, the director is liable to pay to the life insurer an amount equal to the amount of the loss.

(6) If 2 or more persons are liable under subsection (5) in relation to the same act or omission, the liability of those persons is joint and several.

(7) An action under subsection (5) may be brought—

(a) by the life insurer; or

(b) with the written approval of the Bank, by the policyholder of a life policy referable to the statutory fund involved.

(8) An approval under subsection (7)(b) may be given subject to conditions relating to the persons, or the number of persons, who may join in the action as plaintiffs.

(9) A person cannot be ordered to pay an amount under this section and under section 107 in respect of the same act or omission of a life insurer.

(10) This section applies despite anything to the contrary in the Companies Act 1993 or any other enactment (and the duties of a director of a life insurer specified by or under any other enactment are subject to this section to the effect that the director will not be in breach of those duties as a result of complying with the duties imposed under this section).

106 Bank may give notice

(1) If a life insurer has failed to comply with this subpart, the Bank may give the life insurer a written notice requiring the life insurer, within a specified period, to take the action that is specified in the notice to remedy the failure.

(2) The period specified in the notice must be a period ending not earlier than 1 month after the giving of the notice.

(3) The action to be specified in the notice is the action that the Bank thinks appropriate and reasonable to overcome the effects of the failure to comply.

(4) At any time before the end of the period specified in the notice, the Bank may extend the period by any further period that the Bank thinks fit.

(5) A life insurer must comply with a notice under subsection (1).

107 Liability of directors

(1) Subsection (2) applies if—

(a) the Bank has given a notice to a life insurer under section 106 in respect of a contravention of this subpart; and

(b) the contravention has resulted in a loss to a statutory fund; and

(c) the life insurer has failed to comply with the notice within the period specified in it or within that period as extended under section 106(4).

(2) The persons who were the directors of the life insurer when the contravention of this subpart occurred are jointly and severally liable to pay to the life insurer an amount equal to the amount of the loss.

(3) A person is not liable under subsection (2) if the person proves that he or she used due diligence to prevent the occurrence of the contravention or to ensure that the life insurer complied with the notice.

108 Bank's power to sue in name of life insurer

(1) If the Bank thinks that it is in the interests of the policyholders of life policies referable to a statutory fund to do so, the Bank may bring an action against a person in the name, and for the benefit, of a life insurer for the recovery of an amount that the life insurer is entitled to recover under section 107.

(2) In an action under subsection (1), the court may make any order in the matter as to costs and otherwise as it thinks fit.

Restructure and termination of statutory funds

109 Restructure of statutory funds

(1) A life insurer may apply to the Bank to restructure its statutory funds by making 1 or more life policies that are referable to a statutory fund or funds of the life insurer become referable to another statutory fund or funds of the life insurer (whether existing or proposed).

(2) If the application is approved, the restructure may take place in accordance with any conditions that the Bank may impose.

(3) The conditions may include (without limitation) conditions relating to the following:

(a) a requirement to notify interested persons of the outcome of the application:

(b) matters connected with how the restructure takes place, including the following:

(i) life policies becoming referable to a receiving fund or funds:

(ii) policy liabilities and other liabilities becoming referable to a receiving fund or funds:

(iii) assets of a transferring fund becoming assets of a receiving fund or funds:

(iv) the timing of the restructure:

(v) if a receiving fund is a proposed new statutory fund, the establishment of that fund.

(4) The Bank must not approve the application if it considers that—

(a) the restructure will result in unfairness to the policyholders of life policies referable to a transferring fund or a receiving fund when those policyholders are viewed as a group; or

(b) immediately after the restructure,—

(i) the life insurer will fail to maintain a solvency margin in respect of a transferring fund; or

(ii) the life insurer will fail to maintain a solvency margin in respect of a receiving fund; or

(c) the life insurer is being liquidated or wound up when the application is made.

(5) Subsection (4)(b)(i) does not apply if the transferring fund is to be wound up.

(6) In this section,—

receiving fund means the fund, or each fund, to which the life policies will become referable after a restructure

transferring fund means the fund, or each fund, to which the life policies are referable before a restructure.

110 Termination of statutory funds

(1) A life insurer may apply to the Bank to terminate 1 or more of its statutory funds.

(2) If the application is approved, the termination may take place in accordance with any conditions that the Bank may impose.

(3) The conditions may include (without limitation) conditions relating to the following:

(a) a requirement to notify interested parties of the outcome of the application:

(b) matters connected with how the termination takes place, including the following:

(i) distribution or application of assets:

(ii) settling of liabilities:

(iii) the timing of the termination.

(4) The Bank must not approve the application if it considers that—

(a) the termination will result in unfairness to the policyholders of life policies referable to the fund or funds when those policyholders are viewed as a group; or

(b) the life insurer is being liquidated or wound up when the application is made.

Additional requirements for transfer of life policies between statutory funds by endorsement

111 Additional requirements for transfer of life policies between statutory funds by endorsement

(1) Subsection (2) applies if—

(a) a life insurer has more than 1 statutory fund; and

(b) because of an endorsement referred to in section 91(4), either—

(i) a life policy has ceased to be referable to one of those funds and become referable to another fund; or

(ii) a life policy referable to 1 or more of those funds has become referable to a further fund or funds.

(2) The life insurer must transfer to each fund to which the policy has become referable assets of a value equivalent to such part of the liabilities of the life insurer as is ascertained in the prescribed manner.

(3) If, because of an endorsement referred to in section 91(4), a life policy that is referable to a statutory fund becomes referable to another statutory fund, or a life policy that is referable to 1 statutory fund becomes referable to 2 or more statutory funds, the life insurer concerned must give notice to the policyholder of the policy in the prescribed manner.

(4) In this section, **liabilities**, in relation to a life insurer, means—

(a) policy liabilities; and

(b) reserves; and

(c) any other liabilities of the life insurer.

Allocation of profits and losses and of capital payments and distribution of profits and capital

112 Life insurer must allocate operating profits and losses in accordance with prescribed requirements

(1) A life insurer must, in the prescribed circumstances and in the prescribed manner, allocate the operating profit or operating loss of—

(a) a statutory fund; or

(b) a category of business of a statutory fund.

(2) The categories of business of a statutory fund for the purposes of this subpart are the categories of business that are determined in the prescribed manner.

113 Allocation of capital

(1) A life insurer must allocate to shareholders' or members' capital of a statutory fund all capital payments made to the fund under section 93.

(2) A life insurer allocates a capital payment by—

(a) identifying in its financial statements prepared as at the end of the period in which the payment was made the amount of the payment; and

(b) identifying that amount as an amount that should be added to shareholders' or members' capital.

114 Distribution of retained profits

The distribution of retained profits of a statutory fund may be made only in accordance with the prescribed requirements.

115 Distribution of shareholders' or members' capital

A distribution of shareholders' or members' capital in relation to a statutory fund may be made only in accordance with the prescribed requirements.

Application of statutory fund assets on liquidation or winding up

116 Application of statutory fund assets

(1) In a liquidation or other winding up of a life insurer, the assets of a statutory fund (the **primary fund**) must first be applied in discharging the following expenses, fees, debts, and claims, in the order of priority in which they are listed:

(a) the fees and expenses properly incurred by the liquidator in carrying out the duties and exercising the powers of the liquidator, and the remuneration of the liquidator:

(b) the reasonable costs of a person who applied to a court for an order that the insurer be put into liquidation or wound up, including the reasonable costs incurred between lawyer and client in procuring the order:

(c) the actual out-of-pocket expenses necessarily incurred by any liquidation committee:

(d) to any creditor who protects, preserves the value of, or recovers assets of the primary fund for the benefit of the insurer's creditors by the payment of money or the giving of an indemnity,—

(i) the amount received by the liquidator by the realisation of those assets, up to the value of that creditor's unsecured debt; and

(ii) the amount of the costs incurred by that creditor in protecting, preserving the value of, or recovering those assets.

(2) In this section, **liquidator** includes a person who is occupying the position of a liquidator of the insurer by whatever name called.

(3) Subsection (1) has effect only to the extent that expenses, fees, debts, and claims are liabilities that are referable to the business of the primary fund.

(4) If any assets remain after the application of subsection (1), the assets must be applied according to the following rules:

(a) the assets are to be applied first in discharge of policy liabilities of the life insurer referable to the primary fund:

(b) if any assets remain, they are to be applied in discharge of other liabilities that are referable to the business of the primary fund:

(c) if, after the application of assets according to paragraphs (a) and (b), any assets of the primary fund remain, those assets are to be applied in the manner that the High Court directs.

(5) If, for the purposes of subsection (4)(a), the assets are insufficient to discharge all of the policy liabilities of the life insurer referable to the primary fund, the assets are to be applied in discharge of those policy liabilities in the manner that the High Court directs.

(6) If, for the purposes of subsection (4)(b), the assets are insufficient to discharge all of the other liabilities that are referable to the business of the primary fund, the assets are to be applied in discharge of those liabilities in the manner that the High Court directs.

(7) Directions given for the purpose of subsection (4)(c), (5), or (6) are to be the directions that the High Court considers equitable, having regard to,—

(a) in the case of subsection (4)(c),—

(i) the interests of the policyholders of life policies referable to the primary fund; and

(ii) the interests of the policyholders of life policies referable to statutory funds of the life insurer other than the primary fund; and

(iii) the interests of creditors of the life insurer whose debts have not been discharged by the application of assets according to subsection (4)(b); and

(iv) the interests of shareholders or members of the life insurer:

(b) in the case of subsection (5), the interests of the policyholders of life policies referable to the primary fund:

(c) in the case of subsection (6), the interests of creditors in respect of the other liabilities that are referable to the business of the primary fund.

(8) The reference in subsection (7)(a)(iii) to creditors of a life insurer is not limited to creditors to whom amounts are due in relation to the business of a statutory fund, but includes all creditors of a life insurer, whatever the nature of the liabilities involved.

(9) If a liability of the life insurer is referable to 2 or more statutory funds or is referable in part to a statutory fund but is also related to business, other than life insurance business, carried on by the insurer, the liquidator may apportion the liability so as to determine the part of the liability that is to be borne by each of the statutory funds or by the statutory fund, as the case may be.

(10) In making an apportionment under subsection (9), the liquidator must comply with any directions of the High Court.

(11) The part of the amount so determined in relation to a statutory fund is to be treated as a liability of the life insurer that is referable to the business of the fund.

(12) This section applies despite anything to the contrary in the Companies Act 1993.

Liability of directors for loss to statutory fund

117 Liability of directors for loss to statutory fund

(1) Subsection (2) applies if—

(a) a life insurer contravenes this subpart in relation to a statutory fund; and

(b) the contravention results in a loss to the statutory fund; and

(c) the life insurer has been put into liquidation or is otherwise being wound up.

(2) The persons who were the directors of the life insurer when the contravention occurred are jointly and severally liable to pay to the insurer an amount equal to the amount of the loss.

(3) A person is not liable under subsection (2) if the person proves that he or she used due diligence to prevent the occurrence of the contravention.

(4) On application by the liquidator of the licensed insurer, the High Court may order any person liable under subsection (2) to pay to the insurer the whole or any part of the loss.

(5) A person cannot be made liable both under this section and under sections 105 to 108 in respect of the same contravention.

Offence

118 Offence to fail to comply with subpart

(1) A life insurer commits an offence if it fails to comply with this subpart and is liable, on conviction, to a fine not exceeding $500,000.

(2) Section 216 (which relates to the liability of directors) does not apply in respect of an offence under this section.

Section 118(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Exemptions

119 Bank may exempt overseas insurers from compliance with subpart

(1) The Bank may, by notice to an overseas insurer, exempt the insurer (and its directors) from compliance with this subpart.

(2) The Bank must, before granting an exemption, be satisfied that—

(a) the overseas insurer is required, under the law or other regulatory requirements of the home jurisdiction of the insurer, to maintain, in respect of its life insurance business, a statutory fund or other arrangement for separating its life insurance obligations from its other obligations; and

(b) there is no overseas policyholder preference in relation to payments out of, or in respect of, the statutory fund or arrangement; and

(c) the nature and extent of prudential supervision that applies in respect of the statutory fund or arrangement is, in terms of achieving the purposes of this Act, at least as satisfactory as the nature and extent of prudential supervision that applies in respect of statutory funds under this subpart.

(3) The matters in subsection (2) must be treated as being satisfied in respect of an overseas insurer that is incorporated in a jurisdiction that is prescribed for the purposes of this subsection.

(4) This section is subject to section 232 (which provides for general provisions relating to exemptions).

Part 3
Prudential supervision of licensed insurers

Bank to undertake prudential supervision

120 Prudential supervision

The Bank must in accordance with this Part undertake prudential supervision of licensed insurers.

Supply of information

121 Supply of information by licensed insurers for purposes of prudential supervision

(1) For the purposes of this Act, the Bank may, by notice in writing to any licensed insurer, require the insurer to supply to the Bank any information, data, or forecasts about any matters relating to the business, operation, or management of the insurer.

(2) For the purposes of this Part, a reference to matters relating to the business, operation, or management of a person includes the corporate, financial, or prudential matters of the person.

(3) A licensed insurer may be required to supply information, data, or forecasts—

(a) relating to business carried on by the insurer in New Zealand or elsewhere (or both); and

(b) in a consolidated form (if specified by the Bank).

(4) The notice may specify—

(a) the periods for which, and the form in which, the information, data, or forecasts must be supplied; and

(b) the time by which, and the manner in which, the information, data, or forecasts must be supplied.

(5) The Bank may, by a subsequent notice, vary, revoke, or amend a notice.

(6) A licensed insurer commits an offence if the insurer fails to comply with any requirements of the Bank under this section and is liable, on conviction, to a fine not exceeding $500,000.

Section 121(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

122 Notice may require supply of information, data, or forecasts in relation to associated persons

The Bank may, by notice under section 121, require a licensed insurer to supply information, data, or forecasts in relation to any associated person of the licensed insurer.

123 Associated persons may be required to supply information to licensed insurers

(1) An associated person of a licensed insurer must, on being required by the insurer to do so, supply the insurer with information, data, or forecasts relating to the person in order to enable the insurer to comply with a notice under section 121.

(2) A person commits an offence if the person fails to comply with this section and is liable, on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

Section 123(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

124 Supply of information by other persons for purposes of prudential supervision

(1) If the Bank has reasonable grounds to believe that a person has information, data, or forecasts that the Bank could require a licensed insurer to supply under section 121, it may, by notice in writing to the person, require the person to supply the information, data, or forecasts to the Bank.

(2) The notice may specify—

(a) the periods for which, and the form in which, the information, data, or forecasts must be supplied; and

(b) the time by which, and the manner in which, the information, data, or forecasts must be supplied.

(3) The Bank may, by a subsequent notice, vary, revoke, or amend a notice.

(4) A person commits an offence if the person fails to comply with any requirements of the Bank under this section and is liable, on conviction,—

(a) in the case of an individual, to a fine not exceeding $50,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000.

Section 124(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

125 Requirement that information, data, or forecasts be audited or reviewed

(1) The Bank may, by notice in writing, require a licensed insurer or other person to obtain an audit or a review, by an auditor, actuary, or other person approved by the Bank, of any information, data, or forecasts that the insurer or other person, as the case may be, is required to supply under section 121 or 124.

(2) A licensed insurer or other person commits an offence if the insurer or person fails to comply with this section and is liable, on conviction,—

(a) in the case of an individual, to a fine not exceeding $50,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000.

Section 125(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

126 Bank may require report relating to licensed insurers or associated persons

(1) The Bank may, by notice in writing to a licensed insurer, require the insurer to supply the Bank with a report or series of reports, prepared by a person approved by the Bank, on any matters relating to the business, operation, or management of either or both of the following:

(a) the insurer:

(b) any associated person of the insurer.

(2) The notice under subsection (1) must contain a statement of the reasons why the Bank wants the report or series of reports to be supplied.

(3) An associated person of the licensed insurer must, if required to do so by the insurer, supply information relating to the person in order to enable the insurer to comply with a notice under this section.

(4) A licensed insurer or an associated person of the insurer commits an offence if the insurer or person fails to comply with this section and is liable, on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

Section 126(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

127 Disclosure of information to Bank by auditors and actuaries

Every person who holds, or at any time has held, office as required by any enactment, as an auditor of a licensed insurer or of an associated person of a licensed insurer or as an appointed actuary, must disclose to the Bank information relating to the affairs of the insurer or associated person obtained in the course of holding that office if, in the opinion of that person,—

(a) the licensed insurer or associated person—

(i) is failing to maintain a solvency margin or is likely to fail to maintain a solvency margin at any time within the next 3 years; or

(ii) is in serious financial difficulties; or

(iii) is, or has been, operating fraudulently or recklessly; and

(b) the disclosure of that information is likely to assist, or be relevant to, the exercise by the Bank of its powers under this Act.

128 Auditor or actuary to inform of intention to disclose

Every auditor or actuary must, before disclosing any information to the Bank under section 127, take reasonable steps to inform the licensed insurer or associated person of the intention to disclose the information and the nature of the information.

129 Protection of auditors and actuaries

(1) No civil, criminal, or disciplinary proceedings lie against any auditor or actuary arising from the disclosure in good faith of information to the Bank under section 127.

(2) No tribunal, body, or authority having jurisdiction in respect of the professional conduct of any auditor or actuary may make any order against, or do any act in relation to, that person in respect of the disclosure referred to in subsection (1).

(3) No information received by the Bank under section 127 is admissible in evidence in any proceedings against the auditor or actuary concerned.

(4) Nothing in subsection (3) limits the admissibility of any information obtained in any other way.

Investigations

130 Investigations

(1) Subsection (2) applies if the Bank has reasonable cause to suspect that 1 or more of the following applies:

(a) a licensed insurer has failed, is failing, or is likely to fail to maintain a solvency margin:

(b) the business of a licensed insurer has not been, or is not being, conducted in a prudent manner:

(c) a licensed insurer has been or is operating fraudulently or recklessly:

(d) a licensed insurer or an associated person has failed to comply with any requirement to supply information, data, or forecasts under this Part, or any information or data supplied by the insurer or person under this Part is false or misleading in a material particular:

(e) a licensed insurer has failed, is failing, or is likely to fail to comply with any direction, condition, or any other requirement imposed by or under this Act or the regulations.

(2) The Bank may do either or both of the following if it considers it is reasonably necessary for the purposes of carrying out its functions and exercising its powers under this Act:

(a) by notice in writing to the licensed insurer or associated person, require the insurer or person to supply to the Bank, within the time specified in the notice, the information or data specified in the notice:

(b) appoint, in writing, any suitably qualified person (an **investigator**) to carry out an investigation of the affairs of the licensed insurer or associated person.

(3) A licensed insurer or an associated person commits an offence if the insurer or person fails to comply with any requirement of the Bank under subsection (2)(a) and is liable, on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

Section 130(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

131 Power to obtain information or documents

(1) An investigator may, for the purposes of carrying out an investigation of the affairs of a licensed insurer or an associated person,—

(a) by notice in writing, require the insurer or associated person, or any officer or employee of the insurer or associated person, or any other person, to—

(i) supply any information or data relating to the business, operation, or management of the insurer or associated person:

(ii) produce for inspection any documents of or relating to the business, operation, or management of the insurer or associated person that are in the custody or under the control of the insurer or associated person, officer, employee, or other person:

(iii) if necessary, reproduce in usable form any information recorded or stored in those documents:

(b) take copies of any documents produced for inspection under paragraph (a).

(2) An investigator who exercises any powers conferred by subsection (1) must, if requested, produce the instrument of the investigator's appointment.

132 Power to enter and search place

(1) An investigator may, for the purposes of carrying out an investigation of the affairs of a licensed insurer or an associated person, enter and search any place if—

(a) the occupier of the place consents; or

(b) the investigator obtains a warrant under this section.

(2) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who, on an application made by an investigator in the manner provided in subpart 3 of Part 4 of that Act, is satisfied that there are reasonable

grounds for believing that 1 or more of the following applies may issue a warrant to the investigator:

(a) that it is reasonably necessary for the purpose of determining whether to exercise any powers conferred on the Bank under this Act that an investigation of the affairs of a licensed insurer or an associated person should be carried out:

(b) that a licensed insurer or another person has failed to comply with any requirement to supply information, data, or forecasts under this Part, or any information, data, or forecasts supplied by the insurer or other person under this Part are false or misleading in a material particular:

(c) that a licensed insurer has failed, is failing, or is likely to fail to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations.

(3) The provisions of Part 4 of the Search and Surveillance Act 2012 (except for sections 118 and 119) apply.

Section 132(2): amended, on 1 October 2012, by section 265(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 132(3): replaced, on 1 October 2012, by section 265(3) of the Search and Surveillance Act 2012 (2012 No 24).

133 Offences in relation to investigations

(1) Every person commits an offence who—

(a) hinders, obstructs, or delays an investigator in the carrying out of an investigation under this Act; or

(b) fails to comply with any lawful requirement of an investigator.

(2) A person who commits an offence under this section is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

Section 133(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

134 Effect of final decision that exercise of powers under sections 130 and 131 unlawful

In any case where it is declared in a final decision given in any proceedings in respect of the exercise of powers conferred by sections 130 and 131 that the exercise of any powers conferred by those sections is unlawful, to the extent to which the exercise of those powers is declared unlawful,—

(a) the Bank must ensure that as soon as is reasonably practicable after the decision of the court is given—

(i) any information or data supplied by the licensed insurer or person under section 130(2)(a) or 131(1)(a) is destroyed:

(ii) any documents or extracts from documents obtained pursuant to an inspection made under section 131(1)(a) are returned to the person previously having possession of those documents or previously having them under his or her control, and any copies of those documents or extracts are destroyed:

(iii) any information derived from or based upon any such information and data or documents or extracts is destroyed:

(b) no information or data supplied by the licensed insurer or person under section 130(2)(a) or 131(1)(a), and no documents or extracts from documents obtained under section 131(1)(a),—

(i) are admissible in evidence in any proceedings:

(ii) may be used in connection with the exercise of any power conferred by Part 4 or 5.

Miscellaneous provisions

135 Confidentiality of information, data, documents, and forecasts

(1) This section applies to—

(a) information, data, documents, and forecasts supplied or disclosed to or obtained by the following under, or for the purposes of, or in connection with the exercise of powers conferred by, this Act:

(i) the Bank; or

(ii) an investigator:

(b) information and data derived from or based upon information, data, documents, and forecasts referred to in paragraph (a):

(c) information relating to the exercise, or possible exercise, of the powers conferred by this Act.

(2) The Bank may publish or disclose any information, data, document, or forecast to which this section applies only if—

(a) the information, data, document, or forecast is available to the public under any Act (other than the Official Information Act 1982) or is otherwise publicly available; or

(b) the information or data or forecast is in a statistical or summary form; or

(c) the publication or disclosure of the information, data, document, or forecast is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the Bank by this Act or any other legislation; or

(d) the publication or disclosure is made under subpart 3 of Part 6 of the Reserve Bank of New Zealand Act 2021 (which relates to information sharing); or

(e) the publication or disclosure of the information, data, document, or forecast is to any person that the Bank is satisfied has a proper interest in receiving the information, data, document, or forecast; or

(f) the publication or disclosure of the information, data, document, or forecast is with the consent of the person to whom that material relates or of the person to whom that material is confidential.

(3) The Bank must not publish or disclose information, data, a document, or a forecast under subsection (2)(e) unless the Bank is satisfied that appropriate provision exists to protect the confidentiality of that material.

(4) An officer or employee of the Bank or an investigator must not publish or disclose any information, data, document, or forecast to which this section applies except for the purposes of, or in connection with, the performance or exercise of any function or power conferred by this Act or any other enactment.

(5) An officer or employee of the Bank or an investigator commits an offence if the officer, employee, or investigator fails to comply with this section and is liable, on conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both).

(6) The Bank may make information, data, a document, or a forecast to which this section applies available under the Official Information Act 1982 only if 1 or more grounds under subsection (2) apply.

Section 135(2)(a): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 135(2)(c): replaced, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 135(2)(d): replaced, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 135(3): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 135(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 135(6): inserted, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

136 Limits on further disclosure of information, data, documents, or forecasts

(1) A person to whom any information, data, document, or forecast is published or disclosed under section 135(2)(c), (e), or (f) must not publish, disclose, or use that information, data, document, or forecast unless the publication, disclosure, or use is,—

(a) in the case of a publication or disclosure under section 135(2)(c),—

(i) for the purposes of, or in connection with, the performance or exercise of any function, power, or duty referred to in that paragraph; and

(ii) in accordance with any conditions that may be imposed by the Bank:

(b) in the case of a publication or disclosure under section 135(2)(e),—

(i) authorised by the Bank and in accordance with any conditions that the Bank may have imposed; or

(ii) necessary or desirable for the performance or exercise of any function or power conferred by any enactment:

(c) in the case of a publication or disclosure under section 135(2)(f), in accordance with the terms and conditions of the consent referred to in that paragraph.

(2) A person commits an offence if the person fails to comply with this section and is liable, on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

Section 136(1)(a)(i): replaced, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 136(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

137 Application of other enactments to information, data, documents, or forecasts published or disclosed under section 135

Nothing in any Act, other than this Act or the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987, requires the Bank or any person to whom information, data, a document, or a forecast has been published or disclosed under section 135 to make that information, data, document, or forecast available to any other person.

Part 4
Distress management

Subpart 1—Recovery plans

138 Bank may require licensed insurer to prepare recovery plan

(1) The Bank may give a licensed insurer a written direction to prepare a recovery plan if the Bank has reasonable grounds to believe that 1 or more of the following applies:

(a) the insurer has failed, is failing, or is likely to fail to maintain a solvency margin:

(b) the business of the insurer has not been, or is not being, conducted in a prudent manner:

(c) the insurer has failed, is failing, or is likely to fail to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations.

(2) The recovery plan must—

(a) be in writing; and

(b) set out the actions that the licensed insurer will take to effectively address the matters that caused the Bank to give the direction and, in particular, to ensure that (as the case may be)—

(i) the insurer maintains its solvency margin and, in the case of a life insurer, the insurer also maintains the solvency margin or margins that apply in respect of its statutory funds:

(ii) the business of the insurer is conducted in a prudent manner:

(iii) the insurer comes back into compliance, or remains compliant with, any direction, condition, or other requirement referred to in subsection (1)(c); and

(c) set out an appropriate timetable for taking those actions to ensure that those actions are taken as soon as practicable; and

(d) describe the steps that the licensed insurer will take to ensure that the plan remains current, which must include procedures for regular review of the plan to systematically identify deficiencies in the effectiveness of the plan; and

(e) be appropriate to the operations of the licensed insurer, having regard to the size of the insurer, its corporate structure (including its relationship with associated persons), its funding structure, the market sector in which it operates, and its business strategy; and

(f) otherwise be prepared within the time and in the manner specified by the Bank in the direction; and

(g) be approved by the licensed insurer's governing body within the time specified by the Bank in the direction.

(3) The Bank may, in the direction, require the recovery plan to specify a final date (being a date that is satisfactory to the Bank) by which all of the actions referred to in subsection (2)(b) must have been taken and the outcomes in subsection (2)(b)(i), (ii), or (iii) achieved.

(4) The Bank may, in the direction, require the licensed insurer to obtain assistance in the preparation of the recovery plan from a person specified by the Bank.

(5) A direction given under this section must state the grounds on which it is given.

139 Recovery plan must be provided to Bank for approval

(1) The licensed insurer must, within the time specified by the Bank, provide a copy of the recovery plan to the Bank.

(2) The Bank must, after receiving the copy, inform the licensed insurer whether the Bank is satisfied that the plan meets the requirements in section 138(2) and (3).

(3) If the Bank is not satisfied that the recovery plan meets the requirements in section 138(2) or (3),—

(a) the Bank may require the licensed insurer to amend the plan and to resubmit the plan to the Bank for approval within any reasonable time that the Bank may specify; and

(b) the licensed insurer must comply with those requirements.

140 Licensed insurer must comply with recovery plan

The licensed insurer must, after the recovery plan has been approved by the Bank, take all practicable steps to comply with the plan.

141 Amendments to recovery plan

(1) A licensed insurer may amend its recovery plan only with the Bank's approval.

(2) If, at any time, the Bank is no longer satisfied that the recovery plan meets the requirements in section 138(2) or (3),—

(a) the Bank may, by written notice given to the licensed insurer, require the licensed insurer to amend the plan in the manner specified by the Bank and to resubmit the plan to the Bank for approval within any reasonable time that the Bank may specify; and

(b) the licensed insurer must comply with those requirements.

142 Offence to fail to comply with recovery plan requirements

A licensed insurer commits an offence if it fails to comply with any of sections 138 to 141 and is liable, on conviction, to a fine not exceeding $500,000.

Section 142: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Subpart 2—Directions to licensed insurers and associated persons

143 Bank may give directions to licensed insurer

(1) The Bank may give a licensed insurer a direction, in writing, if it has reasonable grounds to believe that 1 or more of the following apply:

(a) the insurer has failed, is failing, or is likely to fail to maintain a solvency margin:

(b) the business of the insurer has not been, or is not being, conducted in a prudent manner:

(c) the insurer, or a director or relevant officer of the insurer, has failed, is failing, or is likely to fail to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations:

(d) the governance structure of the insurer has changed, since its licence was issued, in a manner that significantly reduces the extent to which it is appropriate (having regard to the matters specified in section 19(1)(i)):

(e) the insurer is an overseas insurer and an overseas supervisor has taken, or is taking, regulatory action against the insurer (whether or not that action has been completed):

(f) the insurer is an overseas insurer and the law, requirements, or supervision referred to in section 19(1)(j) has changed, since its licence was issued, in a manner that significantly reduces the extent to which that law, those requirements, or that supervision is appropriate (having regard to the matters specified in that paragraph).

(2) The Bank must, before giving a direction under subsection (1) to a licensed insurer, consider whether, in the circumstances, it would be more appropriate to give a direction to the insurer to prepare a recovery plan under subpart 1.

(3) In this section, **regulatory action** means—

(a) action to cancel or suspend the licence, registration, or other authorisation of the insurer to act as an insurer (or action equivalent to cancelling or suspending such a licence, registration, or authorisation); or

(b) a direction to the insurer to the effect of 1 or more of the following:

(i) to take specified action to improve its solvency:

(ii) to cease to enter into new contracts of insurance:

(iii) to carry on its business, or any part of its business, in accordance with the direction:

(iv) to cease to carry on its business, or any part of its business, in accordance with the direction; or

(c) removing or replacing any directors or relevant officers of the insurer (whether by means of a direction or otherwise); or

(d) civil or criminal proceedings against the insurer.

144 Scope of directions to licensed insurer

(1) A direction given under section 143 may require a licensed insurer to—

(a) consult with the Bank, at the times and in the manner specified by the Bank, about the circumstances of the insurer and the actions or proposed actions of the insurer in respect of resolving any difficulties facing the insurer:

(b) cease entering into any new contracts of insurance:

(c) carry on its business, or any part of its business, in accordance with the direction:

(d) cease to carry on its business, or any part of its business, in accordance with the direction:

(e) take the action that is specified in the direction to address a failure, or potential failure, to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations:

(f) ensure that any officer or employee of the insurer ceases to take part in the management or conduct of its business except with the permission of the Bank and so far as that permission extends:

(g) take the action that is specified in the direction to address any circumstances of financial difficulties.

(2) However, a direction must not require the licensed insurer to cease to enter into contracts of insurance by way of renewal of contracts of insurance that were originally entered into before the direction was given.

145 Bank may give directions to associated person

The Bank may give an associated person of a licensed insurer a written direction if it has reasonable grounds to believe that 1 or more of the following apply:

(a) the associated person, or a director or the chief executive officer of the associated person, has failed, is failing, or is likely to fail to comply with any direction or other requirement imposed by or under this Act or the regulations:

(b) the circumstances of the associated person are such as to be prejudicial to the solvency of the insurer or its ability to comply with this Act or the regulations:

(c) the affairs of the associated person are being conducted in a manner prejudicial to the solvency of the insurer or its ability to comply with this Act or the regulations.

146 Scope of directions to associated person

A direction given under section 145 may require an associated person to—

(a) consult with the Bank, at the times and in the manner specified by the Bank, about the circumstances of the associated person and the actions or proposed actions of the associated person in respect of resolving any difficulties facing the associated person:

(b) take the action that is specified in the direction to address a failure, or potential failure, to comply with any direction or other requirement imposed by or under this Act or the regulations:

(c) ensure that any officer or employee of the associated person ceases to take part in the management or conduct of its business except with the permission of the Bank and so far as that permission extends:

(d) take the action that is specified in the direction to address any circumstances of financial difficulties.

147 Miscellaneous matters relating to directions

(1) A direction given under this subpart must state the grounds on which it is given.

(2) The Bank may—

(a) amend or modify a direction; or

(b) replace a direction with another direction; or

(c) revoke a direction.

148 Offence to contravene directions

(1) A licensed insurer, or an associated person of a licensed insurer, that fails to comply with a direction under this subpart commits an offence.

(2) Every person commits an offence who, being an officer or employee of a licensed insurer or of an associated person of a licensed insurer, obstructs, hinders, or prevents the insurer or associated person from giving effect to a direction under this subpart.

(3) Every person who commits an offence under this section is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

Section 148(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

149 Power to remove, replace, or appoint directors, auditor, or actuary

(1) This section applies if the Bank has reasonable grounds to believe that—

(a) any of the circumstances referred to in section 143(1) or 145 exists; and

(b) it is necessary to—

(i) remove or replace a director, an auditor, or the appointed actuary of a licensed insurer or of an associated person of a licensed insurer; or

(ii) appoint a person as a director, an auditor, or the appointed actuary of a licensed insurer or of an associated person of a licensed insurer.

(2) If this section applies, the Bank may—

(a) remove or replace a director, an auditor, or the appointed actuary of a licensed insurer or of an associated person of a licensed insurer; or

(b) appoint a person as a director, an auditor, or the appointed actuary of a licensed insurer or of an associated person of a licensed insurer.

(3) The Bank must—

(a) exercise a power referred to in subsection (2) by giving notice in writing to—

(i) the director, auditor, or actuary concerned, or the person being appointed; and

(ii) in the case of the removal, replacement, or appointment of a director, the Registrar of Companies; and

(b) give notice in writing of the exercise of that power to the licensed insurer or associated person.

(4) A notice given under subsection (3)(a)(ii) is sufficient compliance with section 159 of the Companies Act 1993 as long as, in the case of an appointment, the notice is accompanied by the form of consent and certificate required under section 152 of that Act.

(5) This section does not apply in respect of a director of an overseas person.

(6) This section has effect despite any enactment, rule of law, or the terms of the constitution of a licensed insurer or an associated person of a licensed insurer.

150 Offence to disclose giving of direction or notice

(1) Every person commits an offence who discloses that a direction has been given under subpart 1 or this subpart or that a notice has been given under section 149.

(2) Nothing in subsection (1) applies to the disclosure or publication of the fact that a direction or notice has been given if the disclosure or publication is made—

(a) to any director, relevant officer, or professional or financial adviser of the licensed insurer or associated person of a licensed insurer to which the direction or notice relates:

(b) with the written consent of the Bank, for the purposes of the sale or other disposition, or the possible sale or other disposition, of the whole or any part of the capital, or business undertaking, of the licensed insurer or associated person of a licensed insurer:

(c) by, or on behalf of, the Bank or with the written consent of the Bank,—

(i) to the public or any class of the public; or

(ii) to any person who has a proper interest in knowing that the direction or notice has been given.

(3) For the purposes of subsection (2)(b) and (c),—

(a) the Bank's consent must not be unreasonably withheld; and

(b) in considering whether to give its consent, the Bank must take into account the time that has elapsed since the direction or notice was given.

(4) Nothing in subsection (1) applies to the disclosure or publication of the fact that a direction has been given requiring the actions set out in section 144(1)(f) or 146(c) for the purpose of giving effect to that direction.

(5) Every person who commits an offence under this section is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

Section 150(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Subpart 3—Liquidation or voluntary administration of licensed insurers

Bank may apply to put insurer into liquidation or voluntary administration, or apply for reduction of value of contracts of insurance

151 Bank may apply for liquidation of insurers

(1) The Bank may, in the case of a licensed insurer that may be put into liquidation under or in accordance with the Companies Act 1993, apply to the High Court to appoint a liquidator for the insurer.

(2) The High Court may, on an application under subsection (1), appoint a liquidator for the licensed insurer if it is satisfied that—

(a) the insurer is unable to pay its debts (and, for that purpose, section 287 of the Companies Act 1993 applies with all necessary modifications whether or not the insurer is a company); or

(b) the insurer is failing to maintain a solvency margin; or

(c) the insurer has persistently or seriously failed to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations; or

(d) it is just and equitable that the insurer be put into liquidation.

(3) The High Court may, on the application of the Bank, appoint a liquidator for a body corporate that may be put into liquidation under or in accordance with the Companies Act 1993 if it is satisfied that the body corporate is carrying on insurance business in New Zealand without holding a licence in breach of section 15.

(4) Subsection (3) does not limit subsections (1) and (2).

(5) Nothing in this section limits or affects any other enactment that provides for the winding up, liquidation, or dissolution of any body corporate or any class of body corporate.

152 Bank may apply for High Court to reduce value of contracts of insurance

(1) The High Court may, on the application of the Bank, reduce the value of 1 or more of a licensed insurer's contracts of insurance if it is satisfied that 1 or more of the grounds specified in section 151(2)(a) to (d) apply.

(2) The High Court may order a reduction under this section on the terms and subject to the conditions (if any) that it thinks fit.

(3) The High Court may, for the purposes of this section, order the Bank to arrange for an independent actuary to prepare a report on the matters that the court thinks fit.

153 Bank may apply for voluntary administration of licensed insurers

The Bank may apply under section 239L of the Companies Act 1993 for the appointment of an administrator for a licensed insurer that is a company.

Bank's approval for voluntary liquidation or appointment of administrator by company

154 Bank's approval for voluntary liquidation or appointment of administrator by company

(1) A liquidator may not be appointed under section 241(2)(a) or (b) of the Companies Act 1993 for a licensed insurer unless—

(a) a copy of the draft special resolution that is proposed for the purposes of section 241(2)(a) of that Act is given to the Bank or the Bank is notified of the occurrence of the event referred to in section 241(2)(b) of that Act (as the case may be) before the appointment is made; and

(b) the Bank has given its written approval to the appointment.

(2) An administrator may not be appointed under section 239I of the Companies Act 1993 for a licensed insurer unless—

(a) a copy of the draft resolution that is proposed for the purposes of that section is given to the Bank before the appointment is made; and

(b) the Bank has given its written approval to the appointment.

(3) An appointment made in breach of subsection (1) or (2) is not valid.

(4) A request for the Bank to give its approval under this section must—

(a) be made in the manner that is specified by the Bank; and

(b) be accompanied by the prescribed fee (if any).

(5) A person that makes a request must provide to the Bank the information that is required by the Bank to assist it in determining whether to give its approval.

Bank's participation in insolvency procedures and certain other proceedings

155 Bank may make certain applications in respect of voluntary administration or liquidation and appear and be heard in proceedings

(1) If any person other than the Bank makes an application to the High Court to appoint a liquidator for a licensed insurer or otherwise for the winding up or dissolution of a licensed insurer or for the appointment of an administrator for a licensed insurer, the Bank may appear and be heard in relation to the application.

(2) If a licensed insurer is in voluntary administration, is subject to a deed of company arrangement, or is in liquidation under the Companies Act 1993,—

(a) the Bank may make an application under any of sections 239R, 239AM, 239ACJ, 239ACL, 239ACX, 239ADB, 239ADD, 239ADO to 239ADQ, 239ADS to 239ADV, 239AER, 239AEU, 245A, 250, 271, 283(4), 284, and 286 of that Act in respect of the insurer (and those sections apply, with all necessary modifications, as if the references to the persons who may make an application under those sections include a reference to the Bank); and

(b) the Bank may appear and be heard in relation to an application made by any other person under any of those sections in respect of the insurer.

(3) If a person makes an application under section 239ADR of the Companies Act 1993 in respect of a licensed insurer, the Bank may appear and be heard in relation to the application.

156 Bank's participation in arrangements, amalgamations, and compromises under Companies Act 1993

(1) If a compromise under section 228(1) of the Companies Act 1993 has been proposed in respect of a licensed insurer, the insurer must send to the Bank a copy of the notice, statement, and lists referred to in section 229(2) of that Act as soon as practicable after those documents are delivered for registration under that subsection.

(2) A licensed insurer that fails to comply with subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding $100,000.

(3) If a person makes an application under section 232, 233, or 236 of the Companies Act 1993 in respect of a licensed insurer, the Bank may appear and be heard in relation to the application.

Section 156(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

157 Bank must be sent copy of applications under Parts 14 to 16 of Companies Act 1993

(1) If a person (other than the Bank) makes an application to the High Court under any provision of Parts 14 to 16 of the Companies Act 1993 in respect of a

licensed insurer, each of the following persons must take reasonable steps to ensure that a copy of the application (together with copies of any reports or other documents that are filed in the court in respect of the application) are sent to the Bank as soon as practicable:

(a) the insurer (unless it is in voluntary administration or liquidation or is subject to a deed of company arrangement):

(b) if the insurer is in voluntary administration or liquidation or subject to a deed of company arrangement, the administrator, liquidator, or deed administrator (as the case may be):

(c) the Registrar of the High Court in which the application is made.

(2) A licensed insurer commits an offence if it fails to comply with subsection (1) and is liable, on conviction, to a fine not exceeding $100,000.

Section 157(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

158 Bank must be sent copies of certain documents and may inspect certain accounts and records

(1) If a person is required to prepare a specified document in respect of a licensed insurer under any of sections 239AH, 239AMC(3), 239ACP(1)(a), 239ACZ, 239ADY(a) and (c), 239ADZ, 239AEA, 245D(3), and 257(1)(a)(i) and (ii) and (c) of the Companies Act 1993, the person must send a copy of the document to the Bank as soon as practicable after it has been prepared.

(2) In subsection (1),—

prepare, in respect of a specified document, includes to lodge, send, file, or make the document

specified document means a report, an account, a deed, a notice, or a statement.

(3) The Bank may inspect any accounts or records kept by a liquidator of a licensed insurer under section 256(1)(a) of the Companies Act 1993.

Section 158(1): amended, on 1 September 2020, by section 58 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

159 Attendance of representative of Bank at certain meetings for licensed insurer in voluntary administration, subject to deed of company arrangement, or in liquidation

(1) This section applies in respect of a licensed insurer that is—

(a) in voluntary administration; or

(b) subject to a deed of company arrangement; or

(c) in liquidation under the Companies Act 1993.

(2) The convenor of a specified meeting in respect of a licensed insurer must ensure that—

(a) the Bank receives the notices and communications relating to the meeting that a person who is entitled to attend the meeting is entitled to receive; and

(b) a representative of the Bank—

(i) is permitted to attend the meeting; and

(ii) may be heard at the meeting.

(3) In this section,—

convenor, in relation to a specified meeting, means an administrator, a deed administrator, a liquidator, or any other person that convenes, calls, or summons the meeting

specified meeting—

(a) means a meeting convened, called, or summoned under any of the provisions of section 239T, subparts 6 to 8 of Part 15A, and sections 239ADF, 243, 244, 258(2)(b) and (d), 314, and 315 of the Companies Act 1993; and

(b) includes—

(i) a meeting of a creditors' committee (within the meaning of section 239AR of the Companies Act 1993):

(ii) a meeting called as a result of a requirement under section 160.

160 Bank may require meeting of creditors or shareholders to appoint liquidation committee

(1) This section applies in respect of a licensed insurer that is in liquidation under the Companies Act 1993.

(2) At any time in the course of the liquidation, the Bank may, by notice in writing to the liquidator, require the liquidator to call a meeting of creditors or shareholders—

(a) to vote on a proposal that a liquidation committee for the purposes of section 315 of the Companies Act 1993 be appointed to act with the liquidator; and

(b) if it is so decided, to choose the members of the committee.

(3) The liquidator must comply with the requirement and section 314(4) to (6) of the Companies Act 1993 apply, with all necessary modifications, for the purposes of this section (except that section 314(4) is not subject to subsections (2) and (3) of that section).

Special insolvency provisions for insurers

161 High Court may reduce value of contracts of insurance

(1) If an application has been made to the High Court to appoint a liquidator or an administrator for a licensed insurer, the court may, if it thinks fit, reduce the

value of 1 or more of the insurer's contracts of insurance instead of appointing the liquidator or administrator.

(2) The High Court may if it thinks fit, on the application of a liquidator or an administrator of a licensed insurer, reduce the value of 1 or more of the insurer's contracts of insurance.

(3) The High Court may order a reduction under this section on the terms and subject to the conditions (if any) that it thinks fit.

(4) A liquidator or an administrator who makes an application under subsection (2) must provide a copy of the application to the Bank as soon as practicable after it is filed.

(5) The Bank is entitled to attend and be heard in any proceedings under this section.

162 High Court may require actuarial report

(1) The High Court may, for the purposes of section 161, order a licensed insurer, a liquidator, an administrator, or another person that is a party to the proceedings to arrange for an independent actuary to prepare a report on the matters that the court thinks fit, and to make any order in the matter as to costs and otherwise as it thinks fit.

(2) The person that arranges for an independent actuary to prepare the report must ensure that a copy is provided to the Bank as soon as practicable after it is prepared.

163 Continuation of life policies if insurer in liquidation

(1) This section applies in relation to the liquidation of a life insurer under the Companies Act 1993.

(2) The liquidator must carry on the life insurer's business so far as it consists of continuing the insurer's life policies with a view to that part of the business being transferred as a going concern to a person who may lawfully continue those life policies.

(3) Subsection (2) applies unless the High Court orders otherwise.

(4) In continuing the business, the liquidator—

(a) may agree to the variation of any life policies in existence when the liquidator is appointed; but

(b) must not enter into any new life policies.

(5) The High Court may, on the application of the Bank or a liquidator, appoint an independent actuary to investigate the life insurer's business so far as it consists of continuing its life policies and to report to the Bank and liquidator—

(a) on the desirability or otherwise of that part of the insurer's business being continued; and

(b) on any reduction in the life policies effected by the insurer that may be necessary for the successful continuation of that part of the insurer's business.

(6) Nothing in Schedule 6 of the Companies Act 1993 limits this section.

164 Liquidator or deed administrator may apply to High Court for approval of scheme of transfer of insurance business

(1) The liquidator or deed administrator of a licensed insurer may apply to the High Court for approval of a scheme under which all or part of the insurer's insurance business is transferred to another person (the **transferee**).

(2) An application under subsection (1) must contain, or be accompanied by, a scheme for the proposed transfer that sets out—

(a) the contracts of insurance in respect of which liability is to be assumed by the transferee (including a description of each class of contract that is sufficient to identify it, and the amount of the liability in respect of each class); and

(b) the assets that are to be transferred to the transferee in consideration for the assumption of that liability; and

(c) the net value of those assets; and

(d) the terms of the agreement or deed under which the proposed transfer is to be carried out; and

(e) particulars of any other arrangements necessary to give effect to the scheme.

(3) The following reports must be provided to the High Court in respect of an application under subsection (1):

(a) a report on the scheme prepared by the Bank that contains the matters required by the High Court and any other matters that the Bank thinks fit; and

(b) an independent actuary's report on the scheme obtained by the Bank that contains the matters required by the High Court and any other matters that the Bank thinks fit.

(4) The licensed insurer is liable to pay to the Bank the costs incurred by the Bank in obtaining the actuary's report under subsection (3)(b) (and the amount payable is recoverable as a debt due to the Bank in any court of competent jurisdiction).

165 Right to attend and be heard

(1) If an application is made under section 164, the liquidator or deed administrator must, as soon as practicable after it is filed, serve notice of the application on each of the following:

(a) the Bank:

(b) the transferee:

(c) the person appointed by the High Court to represent the policyholders of the licensed insurer or any class of those policyholders:

(d) the person appointed by the High Court to represent the shareholders or members of the licensed insurer or any class of those shareholders or members:

(e) the person appointed by the High Court to represent the creditors of the licensed insurer or any class of those creditors.

(2) The following persons are entitled to appear and be heard on the application:

(a) each person to whom notice of the application has been sent under subsection (1):

(b) with the leave of the High Court, any other person who appears to the court to have a sufficient interest in the application.

(3) In respect of a proceeding or intended proceeding under section 164, the High Court may, on an application by the liquidator, the deed administrator, or the Bank, or on its own initiative, appoint persons for the purposes of subsection (1)(c) to (e).

166 Approval of scheme

(1) The High Court may—

(a) approve the scheme without modification; or

(b) approve the scheme subject to the modifications that it thinks fit (subject to the agreement of the liquidator or deed administrator, the Bank, and the transferee); or

(c) refuse to approve the scheme.

(2) In deciding whether to approve a scheme (with or without modifications), the High Court must have regard to—

(a) the interests of the policyholders, shareholders or members, and creditors of the licensed insurer who are affected by the scheme; and

(b) the reports referred to in section 164(3); and

(c) any other matter the court considers relevant.

167 Effect of approval

When a scheme is approved under section 166—

(a) it becomes binding on all persons; and

(b) it has effect in spite of anything in the constitution of any licensed insurer affected by the scheme; and

(c) the liquidator or deed administrator must send a copy of the scheme to the Bank.

168 Application by Bank for directions to liquidator, administrator, or deed administrator

(1) The Bank may apply to the High Court for the court to give directions to the liquidator, administrator, or deed administrator of a licensed insurer relating to the performance or exercise of any of the liquidator's, administrator's, or deed administrator's functions or powers.

(2) On an application under subsection (1), the High Court may give directions concerning the performance or exercise of any of the liquidator's, administrator's, or deed administrator's functions or powers, and every person is bound by those directions.

(3) The liquidator, administrator, or deed administrator is entitled to appear and be heard on the application.

169 Valuation of policies by liquidator or deed administrator

(1) The liquidator of a licensed insurer must determine the amount of the liability of the insurer to each policyholder under each contract of insurance entered into in New Zealand by the insurer in the manner and on the basis that the liquidator decides.

(2) A deed administrator of a licensed insurer may determine the amount of the liability of the insurer to each policyholder under each contract of insurance entered into in New Zealand by the insurer in the manner and on the basis that the deed administrator decides.

(3) The liquidator or deed administrator (if the deed administrator acts under subsection (2)) must give to each policyholder notice in writing of the amount of the liability under the policyholder's contract of insurance as determined under subsection (1) or (2).

(4) The amount of the liability of the licensed insurer, as determined by the liquidator or deed administrator under subsection (1) or (2), is binding upon each policyholder to whom notice is given under subsection (3), unless, within 2 months after the date the notice was given, that person appeals to the High Court against the liquidator's or deed administrator's determination.

(5) On an appeal to the High Court against the liquidator's or deed administrator's determination, the High Court may confirm, reverse, or modify the determination appealed against and may make any other order that it thinks fit.

Subpart 4—Statutory management

Commencement of statutory management

170 Statutory management of licensed insurers and associated persons

(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank,—

(a) declare that a licensed insurer is subject to statutory management; and

(b) declare that an associated person of a licensed insurer is subject to statutory management; and

(c) appoint 1 or more persons as statutory manager or statutory managers of the licensed insurer or associated person for a specified period.

(2) If an Order in Council is made under subsection (1),—

(a) every subsidiary of a licensed insurer declared to be subject to statutory management, except any subsidiary declared to be a subsidiary to which the order does not apply, is subject to statutory management; and

(b) the appointment of a statutory manager for the specified period in respect of the licensed insurer also applies to those subsidiaries.

(3) If a licensed insurer acquires a subsidiary after it has been declared to be subject to statutory management under subsection (1), the subsidiary is not subject to statutory management unless a further Order in Council is made declaring the subsidiary to be subject to statutory management.

(4) Subsections (1)(b) and (2) are subject to section 139J(4) of the Banking (Prudential Supervision) Act 1989.

(5) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives, unless it relates exclusively to an individual (in which case a transitional exemption applies under Schedule 1 of the Legislation Act 2019)	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 170(4): inserted, on 10 December 2013, by section 12 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

Section 170(4): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 170(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

171 Statutory management of overseas persons

If a licensed insurer or an associated person of a licensed insurer that is declared to be subject to statutory management, or a subsidiary of a licensed insurer that becomes subject to statutory management under section 170(2) or (3), is an overseas person, the provisions of this subpart apply to the property, rights, assets, and liabilities relating to its New Zealand business.

172 Date and time of appointment

(1) Every Order in Council made under section 170(1) must specify the date on which, and the time at which, the Order in Council comes into force.

(2) The date and time as specified must not be earlier than the date on which, and the time at which, the Order in Council is made.

(3) If a question arises as to whether, on the date on which a statutory manager was appointed, an act was done or a transaction was entered into or effected before or after the appointment, the act or transaction must, in the absence of proof to the contrary, be treated as having been done, entered into, or effected, as the case may be, after the appointment of the statutory manager.

173 Grounds on which licensed insurer may be declared to be subject to statutory management

(1) The Bank may make a recommendation under section 170 in respect of a licensed insurer only if it is satisfied on reasonable grounds that—

(a) 1 or more of the circumstances specified in section 143(1)(a) to (f) apply and the failure of the insurer may cause significant damage to the financial system or the economy of New Zealand (or both); or

(b) the insurer is, or may be, operating fraudulently or recklessly, and that it is desirable that the insurer be declared to be subject to statutory management for the purpose of—

(i) limiting or preventing the risk of further deterioration of the financial affairs of the insurer; or

(ii) limiting or preventing the carrying out, or the effects, of any fraudulent act or activity; or

(iii) enabling the affairs of the insurer to be dealt with in a more orderly or expeditious way.

(2) However, the Bank must not make a recommendation under section 170 in respect of a licensed insurer unless it is satisfied on reasonable grounds that the public interest, the financial system or economy of New Zealand, or any policyholders of the insurer cannot be adequately protected under the provisions of this Act other than this subpart or under the Companies Act 1993.

174 Grounds on which associated person may be declared to be subject to statutory management

(1) The Bank may make a recommendation under section 170 in respect of an associated person of a licensed insurer if it is satisfied on reasonable grounds that—

(a) 1 or more of the circumstances specified in section 145(a) to (c) apply; or

(b) the business and affairs of the licensed insurer are so closely connected with the associated person that a statutory manager would be unable to exercise effectively the powers conferred by this subpart in relation to the insurer unless the statutory manager is also appointed as statutory manager of the associated person; or

(c) the associated person is, or may be, operating fraudulently or recklessly in a manner prejudicial to the solvency of the insurer or its ability to comply with this Act or the regulations, and that it is desirable that the person be declared to be subject to statutory management for the purpose of—

(i) limiting or preventing the risk of further deterioration of the financial affairs of the person; or

(ii) limiting or preventing the carrying out, or the effects, of any fraudulent act or activity; or

(iii) enabling the affairs of the person to be dealt with in a more orderly or expeditious way.

(2) However, the Bank must not make a recommendation under section 170 in respect of an associated person of a licensed insurer unless it is satisfied on reasonable grounds that the public interest, the financial system or economy of New Zealand, or any policyholders of the person or of the insurer cannot be adequately protected under the provisions of this Act other than this subpart or under the Companies Act 1993.

(3) If an associated person of a licensed insurer is also a licensed insurer, the Bank may make a recommendation under section 170 in respect of the person on any of the grounds in subsection (1) or section 173.

(4) Section 173 does not limit subsection (3).

175 Bank must give notice of recommendation

The Bank must, as soon as practicable after the making of an Order in Council under section 170 declaring a licensed insurer or an associated person of a licensed insurer to be subject to statutory management, give written notice to the insurer or associated person stating the grounds on which the Bank's recommendation was made.

176 Application of this subpart to joint statutory managers, associated persons, and subsidiaries

(1) If an Order in Council is made under section 170 appointing 2 or more persons as statutory managers of a licensed insurer, the order must state whether the powers conferred by this subpart must be exercised by those persons acting together or may be exercised individually.

(2) For the purposes of this subpart, unless the context otherwise requires,—

(a) references to a statutory manager, if 2 or more persons are appointed as statutory managers, include references to those statutory managers:

(b) if an associated person of a licensed insurer is declared to be subject to statutory management, or a subsidiary of a licensed insurer becomes subject to statutory management under section 170(2) or (3),—

(i) references to a licensed insurer in this subpart must be read as including references to the associated person or subsidiary, as the case may be; and

(ii) references to a corporation in the provisions of the Corporations (Investigation and Management) Act 1989 (as applied by section 180) must be read as including references to the associated person or subsidiary, as the case may be.

177 Continuation of statutory management of companies restored to New Zealand register

(1) This section applies to a licensed insurer, an associated person of a licensed insurer, or a subsidiary of a licensed insurer that has been removed from the New Zealand register under section 317 of the Companies Act 1993 while subject to statutory management.

(2) If a person to whom this section applies is restored to the New Zealand register under section 328 of the Companies Act 1993, the person continues to be subject to statutory management from the date the person is so restored.

Exercise of powers

178 Considerations affecting exercise of powers by statutory manager

(1) In exercising the powers conferred by this subpart, a statutory manager of a licensed insurer must have regard to—

(a) the purposes of this Act; and

(b) the principles set out in section 4 that are relevant to the exercise of those powers; and

(c) the advice of the Bank.

(2) Every statutory manager must—

(a) consult with the Bank, to the extent required by the Bank, as to the exercise of those powers:

(b) provide the reports that the Bank may require as to the state of the affairs, business, and statutory management of the licensed insurer to persons specified by the Bank (including, but not limited to, the Bank) in the form and with the frequency that the Bank may require.

(3) The powers conferred by this subpart on a statutory manager of a life insurer are subject to the requirements of subpart 3 of Part 2 (which relates to statutory funds).

179 Statutory manager to comply with directions of Bank

(1) Every statutory manager of a licensed insurer must comply with any directions given in writing by the Bank relating to the exercise of the powers of the statutory manager under this subpart.

(2) This section is subject to section 58 of the Corporations (Investigation and Management) Act 1989 (as applied by section 180).

Application of Corporations (Investigation and Management) Act 1989

180 Application of Corporations (Investigation and Management) Act 1989

The following provisions of the Corporations (Investigation and Management) Act 1989 apply for the purposes of this subpart with all necessary modifications as if a person declared to be subject to statutory management under this subpart were a corporation declared to be subject to statutory management under that Act:

(a) section 42 (which relates to a moratorium):

(b) section 43 (which contains a prohibition against the removal of assets), except that a person who commits an offence under section 43(2) is liable on conviction,—

(i) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(ii) in the case of a body corporate, to a fine not exceeding $500,000:

(c) section 44 (which relates to the statutory manager suspending payment of money owing):

(d) section 45 (which relates to management vesting in the statutory manager):

(e) section 46 (which relates to the powers of the statutory manager):

(f) section 47 (which empowers the statutory manager to carry on the business of the person in statutory management):

(g) section 48 (which empowers the statutory manager to pay creditors and to compromise claims):

(h) section 49 (which relates to the termination of contracts of agency or service):

(i) sections 50(1) and (2), 51, 53, and 72 (which relate to the power of the statutory manager to sell the business undertaking of the person in statutory management):

(j) section 52 (which relates to the liquidation of the person in statutory management):

(k) section 54 (which relates to a power to trace property improperly disposed of):

(l) section 55 (which relates to the application of certain provisions of the Companies Act 1993):

(m) section 57 (which relates to termination of the appointment of the statutory manager), except that section 57(3) and (4) also apply where the statutory manager's period of appointment has expired:

(n) section 58 (which allows a statutory manager to apply to the High Court for directions):

(o) section 59 (which allows the High Court to confer additional powers on the statutory manager):

(p) section 60 (which relates to advisory committees):

(q) section 61 (which provides for a prior winding up, liquidation, or receivership to cease):

(r) section 64 (which relates to certain persons not being entitled to be consulted about the exercise of powers):

(s) section 65 (which relates to the expenses of statutory management):

(t) section 66 (which relates to advances to statutory managers and members of advisory committees):

(u) sections 67 and 68 (which relate to a duty to deliver books and property to the statutory manager and an offence to destroy, alter, or conceal records):

(v) section 69 (which relates to a duty to report offences):

(w) sections 71 and 71A (which relates to the application of other Acts).

Section 180(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

181 Act does not limit application of Corporations (Investigation and Management) Act 1989

(1) Nothing in this Act limits the Corporations (Investigation and Management) Act 1989.

(2) In particular, a licensed insurer (or an associated person of a licensed insurer) may be declared to be subject to statutory management, or subject to the exercise of any other powers, under that Act.

Power to obtain documents and information

182 Powers to obtain documents and information

A statutory manager has, and may exercise, all of the powers conferred on a liquidator of a company by sections 261 to 267 of the Companies Act 1993 in the same manner as if the statutory manager were the liquidator of a company in liquidation under that Act (and, for that purpose, section 373(3) of that Act applies with all necessary modifications).

Sales and dispositions

183 Sale requires Bank's approval

The statutory manager may not sell or otherwise dispose of the following unless the statutory manager has consulted with the Bank and the Bank, with the consent of the Minister, has given approval in writing to the sale or other disposition and the terms and conditions of it:

(a) the whole or any substantial part of the business undertaking of a licensed insurer under section 50(1) of the Corporations (Investigation and Management) Act 1989 (as applied by section 180):

(b) any of the shares of a body corporate formed and registered under section 50(2)(a) of that Act (as applied by section 180):

(c) the whole or any substantial part of the business undertaking of a body corporate formed and registered under section 50(2)(a) of that Act (as applied by section 180).

184 Consents not required under other enactments

The provisions of any enactment or agreement requiring any consent, licence, permission, clearance, or other authority do not apply in respect of the following (being a sale or disposition to which the Bank has, with the consent of the Minister, given its approval under section 183):

(a) the sale or other disposition of the whole or any part of the business undertaking of a licensed insurer under section 50(1) of the Corporations (Investigation and Management) Act 1989 (as applied by section 180):

(b) the sale or other disposition under section 50(2)(e) of that Act (as applied by section 180) of—

  (i) any of the shares of a body corporate formed and registered under section 50(2)(a) of that Act; or

  (ii) the whole or any part of the business undertaking of that body corporate.

Body corporate may be formed to acquire branch of overseas person

185 Statutory manager may form body corporate to acquire business of branch of overseas person

(1) If a licensed insurer that is an overseas person is declared to be subject to statutory management, the statutory manager may—

(a) form and register a body corporate under the Companies Act 1993 or any other Act:

(b) subscribe for or acquire, as trustee for the overseas person, all or any of the shares of the body corporate:

(c) allot or issue all or any of the shares in the body corporate as fully or partly paid, as the case may be, up to the value of any property, rights, and assets vested in the body corporate under subsection (2) (after deducting the value of any liabilities so vested).

(2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, declare that the whole or any part of any property, rights, assets, and liabilities of the overseas insurer relating to its New Zealand business will vest in the body corporate referred to in subsection (1)(a) on a date specified in the order (and the property, rights, assets, and liabilities vest in the body corporate on the date specified).

(3) Nothing in subsection (2) reduces, extinguishes, or affects any obligation or liability of an overseas person.

(4) Every body corporate referred to in subsection (1)(a) is, for the purposes of this subpart, deemed to be a licensed insurer subject to statutory management as if the body corporate had been declared to be subject to statutory management under this subpart.

(5) The statutory manager in respect of the overseas person is the statutory manager of the body corporate referred to in subsection (1)(a) as if the statutory manager had been appointed under section 170, and the provisions of this subpart apply accordingly.

(6) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 185(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

186 Vesting of property subject to security

(1) An order may be made under section 185 vesting any property, rights, and assets of an overseas person in a body corporate formed and registered under that section despite the existence, or the terms and conditions, of any security over the property, or over those rights or assets, in favour of any other person.

(2) Any property, rights, or assets that are declared to vest under an order made under section 185 in the body corporate, being property, rights, or assets subject to a security in favour of any other person, continue to be subject to the security.

187 Proof of vesting

(1) No registrar is obliged solely by reason of section 185 to change the name of any overseas person referred to in that section to that of any body corporate formed and registered under that section in any books or registers or in any document.

(2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer, by the body corporate is, in the absence of evidence to the contrary, sufficient proof that the property is vested in the body corporate if the instrument—

(a) is executed or purports to be executed by the body corporate; and

(b) relates to any property held by the overseas person before the date specified in an Order in Council made under section 185; and

(c) contains a statement that the property has become vested in the body corporate by virtue of the provisions of that section.

(3) In this section, **registrar** means the Registrar-General of Land, a Registrar of Deeds, or any other person charged under any enactment with the keeping of any books or registers.

188 Provisions applying if liabilities included in sale

If all or any part of any liability of a body corporate formed and registered under section 185(1), or all or any part of any liability relating to the New Zealand business of any overseas person, is included in a sale or other disposition referred to in section 50 of the Corporations (Investigation and Management) Act 1989 (as applied by section 180), nothing in section 53(a) of that Act relieves any overseas person from any obligation in respect of that liability.

Obligations incurred by statutory manager

189 Obligations incurred by statutory manager

(1) Any obligations incurred by a statutory manager of a licensed insurer in the course of his or her duties as statutory manager are incurred by that statutory manager on behalf of the insurer, and the statutory manager does not incur personal liability for those obligations.

(2) In the winding up or liquidation of a licensed insurer, an associated person of a licensed insurer, or a subsidiary of a licensed insurer, all amounts required to satisfy obligations incurred by the statutory manager on behalf of the insurer, associated person, or subsidiary must be paid in priority to all other debts.

Value of contracts of insurance

190 Statutory manager may value contracts of insurance

(1) The statutory manager of a licensed insurer may determine the amount of the liability of the insurer to each policyholder under each contract of insurance entered into in New Zealand by the insurer in the manner and on the basis that the statutory manager decides.

(2) The statutory manager must give to each policyholder notice in writing of the amount of the liability of the insurer under the policyholder's contract of insurance as determined under subsection (1).

(3) The amount of the liability of the licensed insurer, as determined by the statutory manager under subsection (1), is binding upon each policyholder to whom notice is given under subsection (2).

191 Value of contracts of insurance may be reduced by Order in Council

(1) This section applies to a licensed insurer that is in statutory management.

(2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, reduce the value of 1 or more of the licensed insurer's contracts of insurance.

(3) The Order in Council may provide for the reduction to be on the terms and subject to the conditions (if any) that are specified in the order.

(4) An order under subsection (2) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 191(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Auditor, actuary, and annual financial statements and records

192 Appointment of auditor and actuary

(1) The statutory manager of a licensed insurer must appoint 1 or more persons (whether as individuals or as the members of any firm or firms) to be the auditor of the insurer.

(1A) The person or persons appointed to be the auditor under subsection (1) must be—

(a) licensed auditors (within the meaning of section 6(1) of the Auditor Regulation Act 2011); and

(b) approved by the Bank.

(2) The statutory manager of a licensed insurer must appoint a person to be the appointed actuary of the insurer, being a person who has been approved by the Bank.

(3) Every appointment must be for a term not exceeding 2 years, but any person appointed as auditor or actuary continues in office until a successor comes into office.

(4) A person appointed as auditor or actuary is eligible for reappointment.

(5) The auditor or actuary must be paid the fees that are fixed by the statutory manager with the approval of the Bank.

(6) Every auditor and every actuary has a right of access at all times to the books and papers of the licensed insurer, and is entitled to require from its officers and employees the information and explanations that the auditor or actuary thinks necessary for the performance of the auditor's or actuary's duties (as the case may be).

Section 192(1): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 192(1A): inserted, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

193 Prior auditor or actuary ceases to hold office

A person holding office as auditor or appointed actuary of a licensed insurer at the time that it is declared to be subject to statutory management ceases to hold that office but may be appointed under section 192 as auditor or appointed actuary (as the case may be) of the insurer.

194 Removal of auditor or actuary

(1) An auditor or actuary appointed under section 192 may be removed from office by the Minister in accordance with a recommendation of the Bank, by notice in writing to the auditor or actuary, for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(2) The notice must be published in the *Gazette* as soon as practicable.

195 Annual financial statements

(1) The statutory manager of a licensed insurer must, within 3 months after the end of each financial year or a later date that is approved by the Bank, prepare the following statements showing the financial position of the licensed insurer and

its subsidiaries at the end of that year and the results of their trading for that year:

(a) a statement of financial position and statement of financial performance of the insurer; and

(b) a consolidated statement of financial position and consolidated statement of financial performance of the insurer and its subsidiaries.

(2) The financial statements must be—

(a) signed by the statutory manager; and

(b) audited and reported on by the auditor.

196 Annual report by statutory manager

(1) The statutory manager of a licensed insurer must, after the end of each financial year, prepare a report on the conduct of the management and the affairs of the licensed insurer and its subsidiaries.

(2) The report, together with the financial statements and the auditor's report on them, must be submitted to the Minister and the Bank within 7 days after the completion of the auditor's report.

(3) The report, financial statements, and the auditor's report on them must within 14 days after submission to the Minister be filed,—

(a) in the case of a licensed insurer that is a company, with the Registrar of Companies:

(b) in the case of any other body corporate, with the person exercising functions corresponding with those of the Registrar of Companies.

Termination of statutory management

197 Termination of statutory management by Order in Council

(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, declare that 1 or more of the following persons who are subject to statutory management cease to be subject to statutory management:

(a) a licensed insurer:

(b) an associated person of a licensed insurer:

(c) a subsidiary of a licensed insurer.

(2) A person who is likely to be affected by the making of an Order in Council under section 170 may request the Bank to make a recommendation under subsection (1).

(3) If an Order in Council is made under subsection (1) declaring that a licensed insurer ceases to be subject to statutory management,—

(a) every subsidiary of the insurer, except any subsidiary specified in the order, ceases to be subject to statutory management on the same date as that specified as the date on which, and at the same time as that specified as the time at which, the insurer ceases to be subject to statutory management:

(b) the appointment of any person appointed as a statutory manager of every such subsidiary terminates on the date and at the time referred to in paragraph (a).

(4) An order under subsection (1) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives, unless it relates exclusively to an individual (in which case a transitional exemption applies under Schedule 1 of the Legislation Act 2019)	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 197(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

198 Termination of statutory management on liquidation

A licensed insurer, an associated person of a licensed insurer, or a subsidiary of a licensed insurer ceases to be subject to statutory management if the insurer, associated person, or subsidiary, as the case may be, is put into liquidation on the application of the statutory manager.

199 Time of termination

(1) If an Order in Council is made under section 197 or a licensed insurer, an associated person, or a subsidiary is put into liquidation,—

(a) the person ceases to be subject to statutory management at the specified time; and

(b) the appointment of any statutory manager appointed in respect of the person terminates at the specified time.

(2) In this section, **specified time** means,—

(a) if an Order in Council is made under section 197, the date and time specified in the order:

(b) if a liquidator is appointed, the date and time of the liquidator's appointment.

Part 5
Miscellaneous provisions

Provisions relating to Lloyd's

200 Lloyd's underwriters must not carry on insurance business in New Zealand unless Lloyd's holds licence

(1) A Lloyd's underwriter must not carry on business in New Zealand that involves entering into contracts of insurance as an insurer with New Zealand policyholders unless Lloyd's holds a licence issued under section 203 or 205.

(2) A Lloyd's underwriter who fails to comply with subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both).

Section 200(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

201 Lloyd's may apply for licence on behalf of underwriting members

(1) Lloyd's may apply for a licence in respect of the insurance business carried on by Lloyd's underwriters.

(2) Lloyd's application must be—

(a) made in the manner that is specified by the Bank; and

(b) accompanied by payment of the prescribed fee for the application (if any).

(3) Lloyd's must provide to the Bank the information that is required by the Bank to assist it in determining the application.

(4) Lloyd's commits an offence if it provides false or misleading information to the Bank for the purposes of the application and is liable, on conviction, to a fine not exceeding $1,000,000.

Section 201(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

202 Lloyd's fit and proper policy and risk management programme

(1) Lloyd's must provide the following to the Bank with its application:

(a) a copy of a written policy that complies with subsection (2) (the **Lloyd's fit and proper policy**); and

(b) a copy of a risk management programme that is relevant to the Lloyd's market (the **Lloyd's risk management programme**).

(2) The Lloyd's fit and proper policy must—

(a) govern the requirements and other criteria that a person must have or satisfy in order to be, and continue to be, a Lloyd's underwriter, being a policy for the purpose of ensuring that only fit and proper persons are, and continue to be, Lloyd's underwriters; and

(b) comply with the prescribed requirements.

203 Bank must issue temporary licence to Lloyd's pending consideration of its application

(1) The Bank must issue a temporary licence to Lloyd's if—

(a) Lloyd's has, within 18 months after the date on which this Act receives the Royal assent, made, or purported to make, an application under section 201; and

(b) Lloyd's has taken reasonable steps to—

(i) provide a fit and proper policy that complies with section 202(2); and

(ii) provide a risk management programme; and

(iii) otherwise make the application under section 201 in the manner that is specified by the Bank.

(2) The licence under subsection (1) remains in force until the earliest of the following:

(a) the issue of a licence under section 205:

(b) the date that the licence is cancelled under section 207(4):

(c) the date that is 3 years after the date on which this Act receives the Royal assent.

204 Lloyd's underwriters may carry on insurance business in New Zealand if Lloyd's holds licence

(1) If Lloyd's holds a licence issued under section 203 or 205, every Lloyd's underwriter may carry on insurance business referred to in section 200 as if the Lloyd's underwriter held a licence.

(2) Every Lloyd's underwriter that carries on insurance business referred to in section 200 under a licence issued under section 203 or 205 must be treated as being a licensed insurer for the purposes of the following provisions (and those provisions apply to the Lloyd's underwriter as a licensed insurer with all necessary modifications):

(a) sections 44 to 72:

(b) subpart 3 of Part 2 (if the Lloyd's underwriter carries on business as a life insurer):

(c) Parts 3 and 4.

(3) Despite subsection (2), in the case of a licence issued under section 203, a Lloyd's underwriter is required to comply with requirements imposed by or under the provisions referred to in subsection (2) only to the extent that the conditions of the licence require the underwriter to comply.

(4) Despite subsection (2), in the case of a licence issued under section 205, the Bank may, by notice to Lloyd's, exempt the Lloyd's underwriters from a requirement imposed by or under the provisions referred to in subsection (2) if the Bank, after taking into account the nature of the Lloyd's market, is satisfied that it would be unduly onerous or burdensome to impose the requirement on those underwriters.

(5) Subsection (4) is subject to section 232 (which provides for general provisions relating to exemptions).

205 Issue of licence to Lloyd's

(1) Lloyd's is entitled to be issued with a licence if the Bank is satisfied that—

(a) every relevant Lloyd's underwriter has the ability to comply with subpart 2 of Part 2 and the regulations (to the extent that those provisions will apply); and

(b) in the case of relevant Lloyd's underwriters who carry on, or propose to carry on, business as life insurers, those Lloyd's underwriters have the ability to comply with subpart 3 of Part 2 and the regulations (to the extent that those provisions will apply); and

(c) Lloyd's has the ability to comply with section 207; and

(d) the Lloyd's fit and proper policy is satisfactory; and

(e) the Lloyd's risk management programme is satisfactory (having regard to the requirements of section 73(2)); and

(f) the nature and extent of prudential supervision by the FSA that applies to Lloyd's and the relevant Lloyd's underwriters is appropriate, having regard to whether it is, in terms of achieving the purposes of this Act, at least as satisfactory as the nature and extent of prudential supervision that applies to insurers incorporated in New Zealand; and

(g) Lloyd's and every relevant Lloyd's underwriter comply with any other prescribed requirements.

(2) The Bank must, after it has made a decision on the application by Lloyd's for a licence, give written notice of the decision to Lloyd's.

(3) If the Bank refuses to issue a licence, the notice must contain, or be accompanied by, a statement of the Bank's reasons for the refusal.

(4) The Bank must give notice of the issue of the licence on the Bank's Internet site.

(5) In this section, **relevant Lloyd's underwriter** means a Lloyd's underwriter that will carry on insurance business referred to in section 200 under the licence.

(6) In this section and section 209, **FSA** means the Financial Services Authority that has functions conferred on it by or under the Financial Services and

Markets Act 2000 (UK) or any other overseas supervisor that acts in relation to insurers in the United Kingdom.

206 Conditions of Lloyd's licence

(1) Lloyd's may be issued with a licence under section 203 or 205 unconditionally or subject to any conditions that the Bank thinks fit.

(2) The conditions may impose obligations on Lloyd's, any Lloyd's underwriter that will carry on insurance business referred to in section 200 under the licence, or both.

(3) Section 22(1) and (3) apply to the licence with any necessary modifications.

207 Obligations on Lloyd's

(1) If Lloyd's holds a licence issued under section 203, Lloyd's must take all practicable steps to ensure that the following are complied with:

(a) the conditions of the licence:

(b) the directions given under section 209.

(2) If Lloyd's holds a licence issued under section 205, Lloyd's must take all practicable steps to ensure that the following are complied with:

(a) the Lloyd's fit and proper policy:

(b) the Lloyd's risk management programme:

(c) the conditions of the licence:

(d) the directions given under section 209.

(3) Lloyd's commits an offence and is liable, on conviction, to a fine not exceeding $500,000 if Lloyd's fails to comply with subsection (1) or (2).

(4) If the Bank is satisfied that Lloyd's has persistently or seriously failed to comply with subsection (1) or (2) or section 210 or 211, the Bank may, by written notice to Lloyd's, cancel its licence.

(5) The Bank may, for the purpose of facilitating a cancellation under subsection (4), direct a Lloyd's underwriter to arrange, subject to the Bank's approval, to assign the underwriter's liabilities under contracts of insurance with New Zealand policyholders to 1 or more licensed insurers (and for that purpose, sections 31(2) to (5), 32, and 33 apply with any necessary modifications).

Section 207(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

208 Provisions that do not apply in respect of Lloyd's or Lloyd's underwriters

Sections 15 to 43, 73 to 81, and 244 to 248 do not apply to Lloyd's or Lloyd's underwriters (except to the extent that any of those provisions are applied under section 207(5)).

209 Bank may direct that Lloyd's underwriters must not issue or renew contracts of insurance

(1) The Bank may give Lloyd's a direction, in writing, under subsection (2) if it has reasonable grounds to believe that 1 or more of the following apply:

(a) as a result of an enactment of an Act of the United Kingdom, a substantial change is made in the constitution, powers, rights, or obligations of Lloyd's or of Lloyd's underwriters:

(b) as a result of a making of a bylaw by Lloyd's, the rights or obligations of Lloyd's underwriters are substantially changed:

(c) there has been a substantial change in the nature, or extent, of the FSA's supervision of Lloyd's or of Lloyd's underwriters.

(2) A direction may do either or both of the following:

(a) direct that Lloyd's underwriters must not enter into contracts of insurance, or undertake liability under contracts of insurance, with New Zealand policyholders:

(b) direct that Lloyd's underwriters must not renew contracts of insurance with New Zealand policyholders.

210 Agent of Lloyd's and address for service

(1) Lloyd's must at all times during which it holds a licence—

(a) be represented for the purposes of this Act by an individual resident in New Zealand who is appointed by Lloyd's as the agent of Lloyd's for the purposes of this Act; and

(b) have an address in New Zealand for service for the purposes of this Act.

(2) Lloyd's must notify the Bank of the matters referred to in subsection (1) and of any changes to those matters.

(3) Anything done in his or her representative capacity by a person appointed by Lloyd's as, or to act as, its agent in accordance with this section is taken, for the purposes of this Act, to have been done by Lloyd's.

211 Lloyd's to give notice of enactments and bylaws

If an Act of the United Kingdom is enacted relating specifically to Lloyd's, or a bylaw is made under the Acts of the United Kingdom known as the Lloyd's Acts 1871–1982 or under any later Act of the United Kingdom relating to Lloyd's, Lloyd's must, within the period of 21 days after the enactment of the Act or the making of the bylaw, give written notice of that matter to the Bank if there are reasonable grounds to believe that the matter will have a material effect on either or both of the following:

(a) the insurance business carried on by any Lloyd's underwriter in New Zealand:

(b) any New Zealand policyholder under a contract of insurance entered into by a Lloyd's underwriter.

212 Act does not authorise Lloyd's underwriter to carry on any business underwriter could not otherwise have carried on

Nothing in this Act authorises the carrying on by a Lloyd's underwriter of any business that the underwriter would not have been authorised to carry on if this Act had not been enacted.

Access to information by overseas supervisor

213 Access to information by overseas supervisor

(1) For the purpose of the exercise by an overseas supervisor of its supervisory functions, the Bank may authorise an overseas supervisor to do either or both of the following:

(a) conduct an inspection of any licensed insurer that is an overseas person:

(b) require any licensed insurer that is an overseas person to supply to the overseas supervisor any information, data, or forecasts relating to that person.

(2) The information, data, or forecasts that an overseas supervisor may be authorised to obtain may include, without limitation, information about the affairs of a particular customer or client of the licensed insurer.

(3) The Bank may grant an authorisation only if it is satisfied that sufficient provision exists to protect the confidentiality of the information, data, or forecasts obtained or required by the overseas supervisor.

(4) An authorisation may be—

(a) granted for the period or periods that the Bank thinks fit; and

(b) varied, revoked, or amended by the Bank.

(5) The Bank must give notice in writing to a licensed insurer if the Bank—

(a) grants an authorisation in relation to that person; or

(b) varies, revokes, or amends that authorisation.

(6) This section has effect despite anything to the contrary in any other enactment or rule of law.

214 Duties of person on receipt of notice under section 213

(1) A licensed insurer that is an overseas person must, on receipt of a notice from the Bank under section 213, comply with that notice by, as the case may be,—

(a) permitting the overseas supervisor to conduct an inspection of that person; or

(b) supplying the overseas supervisor with the required information, data, or forecasts within the time, and at the place, specified in the notice.

(2) A licensed insurer that is an overseas person commits an offence if the person fails to comply in any respect with any requirements notified by the Bank under section 213 and is liable, on conviction, to a fine not exceeding $500,000.

Section 214(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Offences

215 False declarations and representations

(1) Every person commits an offence who, for any purpose relating to this Act, either on the person's own behalf or on behalf of any other person,—

(a) either orally or in writing, makes any declaration or representation to the Bank or an investigator that, to the person's knowledge, is false or misleading in any material particular; or

(b) supplies to the Bank or an investigator any document knowing it to contain any declaration or representation of that kind; or

(c) supplies to the Bank or an investigator a document knowing that it is not genuine.

(2) Every person who commits an offence under this section is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $200,000:

(b) in the case of a body corporate, to a fine not exceeding $500,000.

(3) This section does not apply in the case of section 17(4) or 201(4).

Section 215(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

216 Liability of directors

If a body corporate is convicted of an offence under this Act, every director of the body corporate is guilty of the offence if it is proved—

(a) that the act that constituted the offence took place with his or her authority, permission, or consent; or

(b) that he or she—

(i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and

(ii) failed to take reasonable steps to prevent or stop it.

217 Defence for offences against this Act

(1) In any prosecution of a person for an offence under this Act, it is a defence if the person proves that—

(a) the failure to comply with this Act was due to the act or omission of another person, or some other cause beyond the person's control; and

(b) the person took reasonable precautions and exercised due diligence to avoid the failure.

(2) For the purposes of subsection (1)(a), **another person** does not include a director, employee, or agent of the person charged with the offence.

(3) A person is not, without the leave of the court, entitled as part of a defence provided by this section to rely on any of the circumstances specified in subsection (1)(a) unless the person has, not later than 7 working days before the date on which the hearing of the proceedings commences, served on the prosecution a notice in writing identifying the act, omission, or cause relied on by the person.

217A Time for filing charging document

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence under this Act ends on the date that is 5 years after the date on which the offence was committed.

Section 217A: inserted, on 4 September 2013, by section 12 of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Prohibition against falsely holding out New Zealand connection

218 Prohibition against falsely holding out New Zealand connection

(1) No New Zealand person or overseas company may hold out outside New Zealand that the person carries on insurance business in New Zealand, or that the person is regulated by New Zealand law in respect of insurance business carried on in New Zealand by the person, if the person does not carry on insurance business in New Zealand.

(2) In this section and section 219,—

New Zealand person means any of the following:

(a) a body corporate or an association of persons incorporated or formed in New Zealand:

(b) a person who is ordinarily resident in New Zealand

overseas company means an overseas company that is required to be registered or deemed to be registered under the Companies Act 1993.

(3) A New Zealand person or an overseas company that fails to comply with this section commits an offence and is liable, on conviction,—

(a) in the case of an individual, to a fine not exceeding $50,000:

(b) in the case of a body corporate, to a fine not exceeding $200,000.

Section 218(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

219 Certain New Zealand persons and overseas companies prohibited from using certain words in name

(1) If a New Zealand person or an overseas company does not carry on insurance business in New Zealand, the person cannot—

(a) be formed, incorporated, or registered in New Zealand using a name or title that includes a restricted word; or

(b) change the person's name or title in New Zealand to a name or title that includes a restricted word; or

(c) carry on any activity directly or indirectly in New Zealand (whether through an agent or otherwise) using a name or title that includes a restricted word.

(2) The restricted words are the following in any language:

(a) insurance:

(b) assurance:

(c) underwriter:

(d) reinsurance:

(e) any term whose meaning is the same as, or similar to, that of any term in paragraphs (a) to (d).

(3) A New Zealand person or an overseas company that fails to comply with this section commits an offence and is liable, on conviction,—

(a) in the case of an individual, to a fine not exceeding $50,000:

(b) in the case of a body corporate, to a fine not exceeding $200,000.

Section 219(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

220 Prohibition does not apply in certain cases

(1) Sections 218 and 219 do not apply to a person if, in connection with any insurance business carried on in New Zealand, that person does any 1 or more of the following:

(a) assists in issuing or administering contracts of insurance, or in collecting premiums:

(b) acts as an insurance loss adjuster or assessor:

(c) arranges, negotiates, solicits, or promotes contracts of insurance or the renewals of contracts of insurance or both (for example, a broker or other insurance intermediary).

(2) Sections 218 and 219 do not apply to industry associations.

(3) In this section, **industry association** means a non-profit association of members who work in the insurance industry and that performs 1 or more of the following functions:

(a) representing members' views to non-members, including the Government:

(b) providing dispute resolution:

(c) providing education and training for members:

(d) providing social events for members:

(e) establishing rules or codes of conduct.

(4) The Bank may, by notice in writing to a person, exempt the person from section 219 if the Bank is satisfied that the person—

(a) will not be carrying on insurance business in New Zealand; and

(b) has a legitimate reason to use the particular word in the person's name.

(5) Subsection (4) is subject to section 232 (which provides for general provisions relating to exemptions).

Restriction on insurer's constitution

221 Insurer's constitution must not permit directors to act in holding entity's best interests even though it is not in insurer's best interests

(1) If a licensed insurer is a subsidiary, a provision in the constitution of the insurer is of no effect to the extent that it purports to permit a director of the insurer, when exercising powers or performing duties as a director, to act in a manner that he or she believes is in the best interests of the insurer's holding entity even though it may not be in the best interests of the insurer.

(2) Subsection (1) applies despite section 131(2) of the Companies Act 1993.

(3) In this section, **constitution**, in relation to a licensed insurer, means,—

(a) in the case of a company within the meaning of the Companies Act 1993, the constitution of the company; and

(b) in any other case, the documents or instruments constituting or defining the constitution of the insurer.

(4) This section does not apply to an overseas insurer.

Ban ordered by District Court

222 Power to ban certain persons from participating in insurance business

(1) The District Court may, on the application of the Bank, make an order in respect of a person under subsection (2) if the District Court considers that the person—

(a) has, in connection with an insurance business, engaged in an act, omission, or course of conduct that constitutes serious wrongdoing and that the person is not a fit and proper person to participate in insurance business in 1 or more of the ways described in subsection (2); or

(b) as a director of a licensed insurer, has persistently or seriously failed to comply with this Act or the regulations; or

(c) is a director of a licensed insurer, being an insurer that has persistently or seriously failed to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations, and the person has persistently failed to take reasonable steps to prevent or stop that failure; or

(d) is prohibited from participating in an insurance business in 1 or more of the ways specified in subsection (2)(a) to (g) under an order made, or a notice given, under a law of a country, State, or territory outside New Zealand.

(2) The order is an order banning a person from being or doing 1 or more of the following:

(a) being a director of an insurer:

(b) being concerned or taking part in the management of an insurer:

(c) being a shareholder of an insurer:

(d) being an employee or other agent of an insurer:

(e) acting under a contract for services with an insurer:

(f) being an insurance intermediary:

(g) otherwise participating in an insurance business in any other way (whether paid or unpaid).

(3) Every application to the District Court under this section must be made by an originating application.

(4) A ban under this section has effect from the date specified in the order even though an appeal may have been lodged under section 224.

(5) An order may be—

(a) made even though the person concerned may be criminally liable for the matters on the grounds of which the order is to be made; and

(b) permanent or for a specified time; and

(c) subject to the terms and conditions that the District Court thinks fit; and

(d) cancelled or varied at any time by the District Court.

(6) The District Court may make any order in the matter as to costs and otherwise as it thinks fit.

(7) As soon as practicable after an order is made, the Registrar of the District Court must send a copy of the order to the Bank.

Section 222(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 222(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

223 Notice of hearing

(1) If an application is made for an order under section 222, the Registrar of the District Court must—

(a) fix the time and place for the hearing of the application; and

(b) as soon as practicable, give notice of the application and of the time and place of the hearing to—

(i) the Bank; and

(ii) the person to whom the application relates; and

(iii) any other person who appears to the Registrar of the District Court to have a sufficient connection with the proceedings.

(2) On the hearing of the application,—

(a) the Bank must appear and call to the attention of the District Court any matters that seem to the Bank to be relevant, and may give evidence or call witnesses; and

(b) the person to whom the application relates may appear and give evidence or call witnesses; and

(c) any person referred to in subsection (1)(b)(iii) may also appear and be heard.

224 Appeals to High Court

(1) Any person who has a right to appear and be heard in any proceedings under section 222 may appeal to the High Court if the District Court—

(a) has made or refused to make an order under that section; or

(b) has otherwise finally determined or has dismissed the proceedings.

(2) An appeal is by way of rehearing.

Section 224(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

225 Appeal to Court of Appeal on question of law

(1) Any party to an appeal under section 224 who is dissatisfied with any determination of the High Court in the proceedings as being erroneous in point of law may, with the leave of the High Court or, if the High Court refuses leave, with the leave of the Court of Appeal, appeal to the Court of Appeal against the determination; and section 56 of the Senior Courts Act 2016 applies to any such appeal.

(2) In determining whether to grant leave to appeal, the Court of Appeal must have regard to whether the question of law involved in the appeal is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for its decision.

(3) The Court of Appeal, in granting leave, may impose the conditions that it thinks fit, whether as to costs or otherwise.

(4) The decision of the Court of Appeal on any application for leave to appeal, or on an appeal under this section, is final.

Section 225(1): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

226 Register of banned persons

(1) The Bank must keep a register of persons banned under section 222 (the **register**).

(2) The register may be—

(a) an electronic register; or

(b) kept in any other manner that the Bank thinks fit.

(3) The Bank must take all reasonable steps to ensure that the information contained in the register is available to members of the public at all reasonable times.

227 Search of register

(1) A person may search the register in accordance with this Act or the regulations.

(2) The register may be searched only by reference to the following criteria:

(a) in the case of an individual,—

(i) the name, or former name, of the person:

(ii) the residential or business address of the person:

(iii) the person's date of birth:

(iv) any combination of the criteria in subparagraphs (i) to (iii):

(b) in the case of a body corporate,—

(i) the name, or former name, of the body corporate:

(ii) the address of the body corporate's registered office:

(iii) the address of any place of business of the body corporate:

(iv) any combination of the criteria in subparagraphs (i) to (iii).

(3) A search of the register may be carried out only by the following persons for the following purposes:

(a) an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual:

(b) a person for the purpose of determining whether or not a person is banned under section 222 (and, if so, the nature and extent of the ban).

(4) A search of the register for personal information that has not been carried out in accordance with this section constitutes an action that is an interference with the privacy of an individual under section 69 of the Privacy Act 2020.

Section 227(4): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

228 Offence for banned person to participate in insurance business in breach of order

A person commits an offence if the person fails to comply with an order under section 222 and is liable, on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $1,000,000.

Section 228: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Notice and service

229 Notice and service of documents

(1) Unless this Act provides otherwise, if a provision of this Act requires or authorises any notice or other document, or any notification, to be given or provided to a person, the notice, document, or notification must be in writing and must, in the case of a notice, document, or notification being given or provided to—

(a) an individual, be given—

(i) by delivering it personally or by an agent (such as a courier) to the person; or

(ii) by sending it by post addressed to the person at the person's usual or last known place of residence or business; or

(iii) by sending it by fax or email to the person's fax number or email address provided by the person for the purpose; or

(iv) in any other manner a District Court Judge directs:

(b) a company within the meaning of the Companies Act 1993, be served in a manner provided for in section 387(1) or 388 of that Act:

(c) an overseas company, be served in a manner provided for in section 389(1) or 390 of the Companies Act 1993:

(d) any other body corporate, be served in a manner in which it could be given or served if the body corporate were a company within the meaning of the Companies Act 1993.

(2) In the absence of proof to the contrary, a notice, document, or notification sent to a person in accordance with—

(a) subsection (1)(a)(ii) must be treated as having been given or provided to the person when it would have been delivered in the ordinary course of post; and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted:

(b) subsection (1)(a)(iii) must be treated as having been given or provided to the person on the second working day after the day on which it is sent.

(3) Section 392 of the Companies Act 1993 applies for the purposes of subsection (1)(b) to (d).

(4) If a person is absent from New Zealand, a notice, document, or notification given to the person's agent in New Zealand in accordance with subsection (1) must be treated as having been given or provided to the person.

(5) If a person has died, the notice, document, or notification may be given, in accordance with subsection (1), to his or her personal representative.

Protection from liability and indemnity

[Repealed]

Heading: repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

230 Protection from liability

[Repealed]

Section 230: repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

231 Indemnity

[Repealed]

Section 231: repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

General provisions relating to declarations and exemptions

232 General provisions relating to declarations and exemptions

(1) This section applies to a declaration under section 9 (which relates to declarations that persons are not carrying on insurance business in New Zealand in certain circumstances).

(2) This section also applies to an exemption granted under any of the following sections:

(a) section 38 (which relates to exemptions for an overseas insurer from the requirement to provide fit and proper certificates):

(b) section 59 (which relates to exemptions for an overseas insurer from compliance with solvency standards):

(ba) section 60(2A) (which relates to exemptions for insurers in run-off from the requirement to have a current financial strength rating):

(c) section 119 (which relates to exemptions for an overseas insurer from compliance with statutory fund requirements):

(d) section 204(4) (which relates to exemptions for Lloyd's underwriters):

(e) section 220(4) (which relates to exemptions from the prohibition against using certain words in a name).

(3) The Bank may give a declaration or grant an exemption unconditionally or subject to any conditions that the Bank thinks fit (after taking into account the purposes of this Act and the principles set out in section 4 that are relevant).

(4) The Bank must make every exemption available—

(a) for inspection at all reasonable times, free of charge,—

(i) at the head office of the Bank; and

(ii) on the Bank's Internet site; and

(b) for purchase at all reasonable times and at a reasonable price.

(5) The Bank's reasons for giving a declaration or granting an exemption (including why it is appropriate) must be published or notified with the declaration or exemption.

(6) The Bank may amend or revoke a declaration or exemption in the same way as it may be given or granted.

(7) Lloyd's may apply for an exemption on behalf of Lloyd's underwriters.

(8) A declaration is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(9) *[Repealed]*

Legislation Act 2019 requirements for secondary legislation referred to in subsection (1)

Publication	The maker must: • publish it on their website • make it available for inspection free of charge at the head office of the Bank • make it available for sale at a reasonable price • comply with section 232(5)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 232(2)(ba): inserted, on 4 September 2013, by section 13 of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 232(4): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 232(5): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 232(8): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 232(9): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

General provisions relating to fit and proper standards and solvency standards

233 Status of standards

The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):

(a) fit and proper standards:

(b) solvency standards.

Legislation Act 2019 requirements for secondary legislation referred to in paragraph (a)		
Publication	The maker must: • notify it in the *Gazette* with a brief description of the nature of the standard and where it is available for inspection and purchase • publish it on their website • make it available for inspection free of charge at the head office of the Bank • make it available for sale at a reasonable price	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in paragraph (b)		
Publication	The maker must: • notify it in the *Gazette* with a brief description of the nature of the standard and where it is available for inspection and purchase • publish it on their website • make it available for inspection free of charge at the head office of the Bank • make it available for sale at a reasonable price	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 233: replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

234 Public notice of standards

[Repealed]

Section 234: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

235 Consultation

(1) The Bank must not issue a fit and proper standard or solvency standard unless—

(a) the Bank has consulted the persons or representatives of the persons that the Bank considers will be substantially affected by the issue of the standard; and

(b) those persons have had a reasonable opportunity to comment to the Bank; and

(c) the Bank has considered those comments.

(2) A failure to comply with subsection (1) does not affect the validity of the standard.

(3) Any action taken by or on behalf of the Bank before the commencement of this section in consulting persons or representatives of persons on proposed fit and proper standards or solvency standards must be treated as having been taken by the Bank under, and for the purposes of, this section.

(4) However, the Bank is not required to comply with this section in respect of an amendment to a fit and proper standard or solvency standard if, in its opinion, the amendment corrects a minor error or is otherwise of a minor nature.

Section 235(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

236 Bank may amend, revoke, or replace standard

[Repealed]

Section 236: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Regulations

237 Regulations

(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for all or any of the following purposes:

(a) declaring a class or classes of transactions or matters to be transactions or matters that are not by way of insurance for the purposes of this Act:

(b) declaring a public entity to be an entity to which section 8(2)(d) applies:

(c) prescribing additional requirements for a person to be entitled to be issued with a licence:

(d) prescribing countries, states, or territories as jurisdictions for the purposes of sections 19(4), 38(3), and 119(3):

(e) prescribing additional matters for the purposes of section 20(2)(g):

(f) prescribing conditions or matters that conditions may relate to for the purposes of section 21(2)(h) or 49(3)(d):

(g) prescribing for the purposes of sections 34(4) and 202(2) requirements that fit and proper policies must comply with, including requirements relating to—

(i) processes to be undertaken in assessing whether a person is fit and proper to be appointed to, and hold, a position; and

(ii) actions to be taken where a person is assessed as not being fit and proper; and

(iii) reassessments to ensure that a person who holds a position remains a fit and proper person:

(h) prescribing—

(i) the circumstances and manner in which a financial strength rating must contain, or be accompanied by, a reference to an overseas policyholder preference for the purposes of section 61:

(ii) the circumstances in which disclosure of an overseas policyholder preference under section 72 must be made (including prescribing to whom and when the disclosure must be made):

(iii) the manner in which the disclosure under subparagraph (ii) must be made:

(i) prescribing types of risk for the purposes of section 73:

(j) prescribing auditing and registration requirements in respect of interim financial information referred to in section 81:

(k) declaring a class or classes of contracts not to be life policies for the purposes of section 84:

(l) prescribing matters for the purposes of section 88:

(m) prescribing the manner in which amounts are ascertained or calculated, notices are given, applications are made, or records are kept for the purposes of sections 88, 89, 94, 100, and 111:

(n) prescribing matters relating to the transfer of assets, and the crediting of amounts, to a statutory fund on its establishment for the purposes of sections 89 and 92(a):

(o) prescribing arrangements for the purposes of section 94:

(p) declaring classes of transactions for the purposes of section 97:

(q) prescribing restrictions and requirements for the purposes of section 98:

(r) prescribing circumstances for the purposes of section 99(2)(c), prohibiting investments, or the retention of investments, for the purposes of section 99(2)(d), and prescribing a percentage for the purposes of section 99(4):

(s) prescribing matters for the purposes of sections 112 to 115, including prescribing—

(i) how the amount of an operating profit or operating loss is to be determined; and

(ii) requirements relating to how the operating profit or operating loss must be allocated; and

(iii) the manner in which categories of business of a statutory fund are determined; and

(iv) requirements relating to the amount or proportion of profits (or certain parts of profits) that must be treated as, or added to, policyholders' retained profits of a fund or shareholders' or members' retained profits of a fund (including providing for the amount or proportion to be determined or calculated in a specified manner); and

(v) requirements relating to the amount or proportion of losses (or certain parts of losses) that must or may be taken into account in reduction of policyholders' retained profits of a fund or shareholders' or members' retained profits of a fund (including providing for the amount or proportion to be determined or calculated in a specified manner); and

(vi) how the amount of policyholders' retained profits of a fund, shareholders' or members' retained profits of a fund, or shareholders' or members' capital is determined or calculated; and

(vii) requirements relating to the distribution of retained profits of a fund and shareholders' or members' capital in relation to a fund (including rules relating to ways in which distributions must or may be made, to whom, and restrictions on distributions):

(t) prescribing forms for the purposes of this Act, and prescribing—

(i) the inclusion in, or attachment to, forms of specified information or documents:

(ii) forms to be signed by specified persons:

(u) *[Repealed]*

(v) prescribing procedures, requirements, and other matters for the register kept under section 54A or 226, including matters relating to the operation of that register, access to that register, and the location of, and hours of access to, that register:

(w) prescribing transitional or savings provisions relating to the coming into force of subpart 3 of Part 2 (in addition to any other transitional provisions in this Act):

(x) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) Regulations made under this section or any other provision of this Act may prescribe different matters in respect of different classes of persons.

(3) Regulations made under subsection (1)(w) may provide that, subject to the conditions that are specified in the regulations, during a specified transitional period,—

(a) specified provisions of this Act (including definitions) do not apply:

(b) specified provisions repealed or amended or revoked by this Act continue to apply.

(4) All regulations made under subsection (1)(w) that are still in force on the day that is 3 years after the commencement of this section expire on the close of that day.

(5) *[Repealed]*

(6) *[Repealed]*

(7) *[Repealed]*

(8) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 237(1)(j): amended, on 4 September 2013, by section 14(1) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 237(1)(u): repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 237(1)(v): amended, on 4 September 2013, by section 14(2) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 237(5): repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 237(6): repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 237(7): repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 237(8): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

238 Regulations may provide for exemptions

(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for all or any of the following purposes:

(a) exempting a class of specified persons that have an annual gross premium income (as determined in the manner specified in the regulations) that is less than a specified amount from compliance with—

(i) section 19(1)(d) or (f); or

(ii) section 60; or

(iii) any provision of section 81; or

(iv) subpart 3 of Part 2:

(b) exempting a class of specified persons that have an annual gross premium income (as determined in the manner specified in the regulations) that is less than a specified amount—

(i) from being—

(A) an FMC reporting entity (and, consequentially, a climate reporting entity) for the purposes of the Financial Markets Conduct Act 2013 by virtue of section 451(1)(h) of that Act; or

(B) a climate reporting entity for the purposes of the Financial Markets Conduct Act 2013 by virtue of section 461O(1)(c) of that Act:

(ii) from being an issuer for the purposes of the Financial Reporting Act 1993 by virtue of section 4(1)(da) of that Act:

(c) prescribing terms and conditions that an exemption under paragraph (a) or (b) is subject to.

(2) If the terms and conditions of an exemption under subsection (1)(a) or (b) that are prescribed under subsection (1)(c) are not complied with by a person, the exemption does not apply to the person.

(3) For the purposes of subsection (1),—

(a) different amounts of annual gross premium income may be specified in the regulations in respect of different exemptions; and

(b) the regulations may specify a different manner of determining a person's annual gross premium income in respect of different exemptions; and

(c) the regulations may require an amount or proportion of income of a specified kind to be disregarded in specified circumstances for the purpose of determining a person's annual gross premium income.

(4) In this section, **specified person** means—

(a) a person that was carrying on insurance business in New Zealand immediately before the commencement of this section; or

(b) a friendly society (within the meaning of section 2 of the Friendly Societies and Credit Unions Act 1982).

(5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 238(1)(b): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 238(1)(b): amended, on 27 October 2022, by section 55(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 238(1)(b)(i): replaced, on 27 October 2022, by section 55(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 238(1)(b)(ii): amended, on 27 October 2022, by section 55(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 238(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Incorporation by reference

Heading: inserted, on 4 September 2013, by section 15 of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

238A Incorporation by reference

(1) This section applies to the following instruments:

(a) a declaration under section 9:

(b) a fit and proper standard:

(c) a solvency standard:

(d) regulations.

(2) The following written material may be incorporated by reference in an instrument referred to in subsection (1):

(a) standards, requirements, or recommended practices of international or national organisations:

(b) standards, requirements, or recommended practices prescribed in any country or jurisdiction:

(c) any other written material that deals with technical matters and is too large or impractical to include in, or print as part of, the instrument.

(3) Schedule 1 applies to any material incorporated by reference in an instrument referred to in subsection (1).

Section 238A: inserted, on 4 September 2013, by section 15 of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Repeals and consequential amendments

239 Amendments to Life Insurance Act 1908

(1) This section amends the Life Insurance Act 1908.

(2) Parts 1 and 1A, sections 78 to 79A, and Schedules 2 to 7, 20, and 24 are repealed.

240 Repeals

The following Acts are repealed:

(a) Insurance Companies' Deposits Act 1953:

(b) Insurance Companies (Ratings and Inspections) Act 1994:

(c) Mutual Insurance Act 1955.

241 Amendments to other enactments

(1) The Reserve Bank of New Zealand Act 1989 is amended in the manner indicated in Part 1 of Schedule 3.

(2) The enactments specified in Parts 2 and 3 of Schedule 3 are amended in the manner indicated in that schedule.

242 Amendment to Financial Service Providers (Registration and Dispute Resolution) Act 2008

(1) This section amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

(2) Schedule 2 is amended by adding the following item:

Reserve Bank of New Zealand	Licensed insurers	Insurance (Prudential Supervision) Act 2010

Transitional and savings provisions

243 Bank may approve certain transfers

(1) The Bank may, on the request of an insurer that is not a licensed insurer, give its written approval to a transaction that involves,—

(a) in the case of an overseas insurer, the transfer of all or part of the insurer's New Zealand insurance business to another insurer; or

(b) in the case of any other insurer, the transfer of all or part of the insurer's insurance business to another insurer.

(2) If the Bank approves a transfer under subsection (1), section 53 (which provides for the effect of an assignment of liabilities for the purposes of the transfer) applies with all necessary modifications as if the insurers were licensed insurers.

(3) A request for the Bank to give its approval under subsection (1) must be—

(a) made within 18 months after the date on which this section comes into force; and

(b) made in the manner that is specified by the Bank; and

(c) accompanied by payment of the prescribed fee for the request (if any).

(4) An insurer that makes a request and every other party to the proposed transfer must provide to the Bank the information that is required by the Bank to assist it in determining whether to give its approval.

(5) Sections 46 to 48 apply with all necessary modifications in relation to a request under subsection (1) as if the insurers were licensed insurers.

(6) The Bank may, after considering a request made under subsection (1), by notice in writing to the insurer,—

(a) give its approval unconditionally or subject to any conditions that the Bank thinks fit; or

(b) refuse to give its approval.

(7) If the Bank refuses to give its approval, it must give a notice to the insurer that contains a statement of its reasons.

244 Bank must issue provisional licence pending consideration of application

The Bank must issue a provisional licence to a person if the Bank is satisfied that—

(a) the person was carrying on insurance business in New Zealand immediately before the commencement of this section; and

(b) the person has, within 3 months after the commencement of this section, notified the Bank that it—

(i) was carrying on insurance business in New Zealand immediately before the commencement of this section; and

(ii) intends to continue carrying on insurance business in New Zealand after the date that is 18 months after the date on which this Act receives the Royal assent; and

(c) the person has, within 18 months after the date on which this Act receives the Royal assent, made, or purported to make, an application under sections 17 and 18; and

(d) the person has taken reasonable steps to—

(i) provide a fit and proper policy that complies with section 34; and

(ii) provide a risk management programme that complies with section 73; and

(iii) otherwise make the application in the manner that is specified by the Bank.

245 Bank may also issue provisional licence for insurer that is or will be in run-off

The Bank may also issue a provisional licence to a person if the Bank is satisfied that—

(a) the person was carrying on insurance business in New Zealand immediately before the commencement of this section; and

(b) the person has given to the Bank a notice stating that it intends to cease carrying on insurance business in New Zealand before the date that is 3 years after the date on which this Act receives the Royal assent.

246 Duration of provisional licence

(1) A provisional licence remains in force until the earliest of the following:

(a) the issue of a licence under Part 2:

(b) the date that the provisional licence is cancelled under subsection (2):

(c) the date that is 3 years after the date on which this Act receives the Royal assent.

(1A) Subsection (1B) applies to an entity if—

(a) the entity still holds a provisional licence immediately before the date (the **3-year date**) that is 3 years after the date on which this Act receives the Royal assent; and

(b) 1 or more of the following apply to the entity:

(i) the entity is, immediately before the 3-year date, subject to an insolvency proceeding or process:

(ii) an application for a licence for the entity under section 17 was refused or declined at any time before the 3-year date:

(iii) a direction under section 143 has, at any time before the 3-year date, been given to the entity requiring the entity to cease entering into any new contracts of insurance.

(1B) Despite subsection (1), if this subsection applies to an entity, the provisional licence of the entity remains in force until it is cancelled under subsection (2).

(2) The Bank may cancel a provisional licence if—

(a) the holder has asked the Bank, by written notice, to cancel the licence; or

(b) the Bank is satisfied that the holder has ceased to carry on insurance business in New Zealand; or

(c) in the case of subsection (1B), the Bank is satisfied that—

(i) the holder is no longer subject to an insolvency proceeding or process; or

(ii) the holder is a company that has been removed from the New Zealand register (within the meaning of the Companies Act 1993); or

(iii) the holder is an overseas company that has been removed from the overseas register (within the meaning of the Companies Act 1993); or

(iv) the holder has been liquidated, wound up, or dissolved or has otherwise ceased to exist; or

(v) for any other reason, it is no longer appropriate for the provisional licence to remain in force.

(3) Subsection (2)(c) does not limit subsection (2)(a) or (b).

(4) In this section, an entity is subject to an **insolvency proceeding or process** if any of the following apply:

(a) the entity is in liquidation under the Companies Act 1993 or under any other Act:

(b) the entity is in voluntary administration or subject to a deed of company arrangement:

(c) a receiver has been appointed and is acting in relation to the whole, or substantially the whole, of the assets and the undertaking of the entity:

(d) the entity is subject to a compromise with its creditors that has been approved under Part 14 of the Companies Act 1993:

(e) an order that an arrangement or a compromise is binding on the entity has been made under Part 15 of the Companies Act 1993:

(f) the entity is in statutory management under this Act, the Corporations (Investigation and Management) Act 1989, or any other enactment:

(g) in the case of an overseas person, the overseas person is subject to a proceeding or process in its home jurisdiction that is similar to any of those set out in paragraphs (a) to (f).

Section 246(1A): inserted, on 4 September 2013, by section 16(1) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 246(1B): inserted, on 4 September 2013, by section 16(1) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 246(2)(b): replaced, on 4 September 2013, by section 16(2) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 246(2)(c): inserted, on 4 September 2013, by section 16(2) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 246(3): inserted, on 4 September 2013, by section 16(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Section 246(4): inserted, on 4 September 2013, by section 16(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

247 Provisional licence holder only required to comply with requirements to extent required by conditions

(1) A provisional licence holder is required to comply with the specified requirements only to the extent that the conditions of the licence require the holder to comply.

(2) In this section and section 248, **specified requirements** means the requirements imposed on a licensed insurer set out in the following:

(a) sections 34 to 37 (which relate to fit and proper requirements):

(b) sections 55 to 81 (which relate to solvency standards, financial strength ratings, risk management, and other matters of prudential regulation):

(c) subpart 3 of Part 2 (which relates to statutory funds).

(3) If an insurer becomes, or will become, an issuer under section 4(1)(da) of the Financial Reporting Act 1993 as a result of a provisional licence being issued to the insurer,—

(a) the conditions of the licence may specify the accounting periods or interim accounting periods in respect of which the insurer must be treated as being an issuer under that Act (being periods that commence on or after the date that the licence is issued); and

(b) the Financial Reporting Act 1993 applies accordingly.

248 Conditions of licence

(1) A provisional licence may be issued subject to—

(a) conditions that require the provisional licence holder to comply with the specified requirements in whole or in part and with any modifications, additions, or variations specified in the conditions; and

(b) conditions that require the provisional licence holder to take specified actions to bring the holder into compliance with the specified requirements (including setting an appropriate timetable for taking those actions to ensure that those actions are taken as soon as practicable); and

(c) conditions, in the case of a licence under section 245, that require 1 or more of the following:

(i) the provisional licence holder to cease entering into all contracts of insurance or contracts of insurance of a particular kind (whether by way of renewal or otherwise):

(ii) the provisional licence holder to arrange for the transfer of all or part of the holder's insurance business to another person in the manner specified in the condition:

(iii) the provisional licence holder to otherwise take specified actions to ensure that the holder ceases to carry on insurance business in New Zealand before the date that is 3 years after the date on

which this Act receives the Royal assent (including setting an appropriate timetable for taking those actions); and

(d) a condition under section 247(3); and

(e) any other conditions that the Bank thinks fit.

(2) The Bank may, at any time after a provisional licence is issued, by notice in writing to the provisional licence holder,—

(a) impose conditions of the provisional licence (whether or not the licence is already subject to conditions); or

(b) vary, remove, add to, or substitute any conditions of the provisional licence.

(3) The Bank must not exercise a power referred to in subsection (2) unless—

(a) the Bank gives the provisional licence holder not less than 7 days' notice in writing of the Bank's intention to do so; and

(b) the notice contains, or is accompanied by, a statement of the Bank's reasons; and

(c) the provisional licence holder has a reasonable opportunity to make submissions to the Bank; and

(d) the Bank has regard to those submissions.

249 Public Trust must return deposits

(1) Public Trust must return to a depositor a deposit made with Public Trust under the Insurance Companies' Deposits Act 1953, the Life Insurance Act 1908, or the Mutual Insurance Act 1955 within 30 days after the earliest of the following:

(a) the date that Public Trust receives a notice from the Bank under subsection (2):

(b) in the case of a non-licensed depositor, the date that is 18 months after the date on which this Act receives the Royal assent:

(c) the date that is 3 years after the date on which this Act receives the Royal assent.

(2) The Bank must give a notice for the purposes of subsection (1)(a) in respect of a depositor if the depositor has been issued with a licence under Part 2 or section 205.

(3) If, before a deposit is returned under this section, the depositor is put into liquidation in New Zealand,—

(a) subsection (1) does not apply; and

(b) the deposit must be applied and otherwise dealt with in accordance with the Insurance Companies' Deposits Act 1953 or the Life Insurance Act 1908 (as the case may be) as if this Act had not been enacted.

(4) Until a deposit is returned under this section or is otherwise withdrawn, the Insurance Companies' Deposits Act 1953 or the Life Insurance Act 1908 (as the case may be) continues to apply to the deposit as if this Act had not been enacted.

(5) Every return of securities made for the purposes of this section must be made as follows (unless the depositor otherwise directs in a written notice given to Public Trust):

(a) in the case of securities that are payable to bearer, by the delivery of the securities by Public Trust to the depositor:

(b) in the case of securities that are not payable to bearer, by the transfer of the securities by Public Trust to the depositor.

(6) In this section,—

depositor means a person who has made any deposit with Public Trust under the Insurance Companies' Deposits Act 1953, the Life Insurance Act 1908, or the Mutual Insurance Act 1955

non-licensed depositor means a depositor that, on the date that is 18 months after the date on which this Act receives the Royal assent, does not hold any licence issued under this Act (whether a provisional licence or a licence issued under Part 2 or section 203 or 205).

250 Deposit may be withdrawn in accordance with Insurance Companies' Deposits Act 1953 or Life Insurance Act 1908

A deposit may be withdrawn in accordance with section 3A, 8, 9, or 19 of the Insurance Companies' Deposits Act 1953 or section 6, 11, or 12 of the Life Insurance Act 1908 (which continue to apply despite the repeal of those enactments).

251 Savings in respect of judicial management

Despite the repeal, by section 239, of Part 1A of the Life Insurance Act 1908,—

(a) the provisions of that Act, and in particular Part 1A of that Act, continue to apply to any person that was, immediately before the commencement of this section, subject to judicial management under that Part, in all respects as if they had not been repealed; and

(b) any person empowered under that Act to exercise any power or function in respect of a person referred to in paragraph (a) continues to have, in respect of that person, the same powers and functions that the person had before the commencement of this section.

Schedule 1
General provisions relating to incorporation by reference

s 238A

Schedule 1 heading: amended, on 4 September 2013, by section 17(1) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

1 Material incorporated by reference

(1) Material may be incorporated by reference into a specified instrument—

(a) in whole or in part; and

(b) with any modifications, additions, or variations specified in the specified instrument.

(2) Material incorporated by reference—

(a) is the material as it exists at the time the specified instrument is issued or made; and

(b) has legal effect as part of the specified instrument for all purposes, except as provided in clauses 7 and 8.

(3) In this schedule, **specified instrument** means an instrument to which section 238A applies.

Schedule 1 clause 1 heading: amended, on 4 September 2013, by section 17(2) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 1(1): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 1(1)(b): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 1(2)(a): amended, on 4 September 2013, by section 17(4) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 1(2)(b): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 1(3): inserted, on 4 September 2013, by section 17(5) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

2 Proof of material incorporated by reference

(1) A copy of any material incorporated by reference in a specified instrument must be—

(a) certified by the Governor as a correct copy of the material; and

(b) retained by the Bank.

(2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material into the specified instrument.

Schedule 1 clause 2(1): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 2(2): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

3 Access to material incorporated by reference

(1) The Bank—

(a) must make copies of all material incorporated by reference in a specified instrument available for inspection during normal working hours at the head office of the Bank; and

(b) must make copies of the material available for purchase at a reasonable price from the head office of the Bank; and

(c) may make copies of the material available in any other way that the Bank considers appropriate in the circumstances (such as on an Internet site); and

(d) must give notice in the *Gazette* of how the material is available for inspection and purchase.

(2) Subclause (1) applies to material when it is first incorporated into a specified instrument, and to any subsequent amendment or replacement of material that is incorporated into the instrument.

(3) A failure to comply with this clause does not invalidate a specified instrument.

Schedule 1 clause 3(1)(a): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 3(1)(c): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Schedule 1 clause 3(2): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 3(2): amended, on 4 September 2013, by section 17(6) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 3(3): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

4 Effect of amendments to, or replacements of, material incorporated by reference

An amendment to, or replacement of, material incorporated by reference in a specified instrument has legal effect as part of the instrument only if—

(a) the amendment or replacement material is made by the person or organisation that made the original material; and

(b) the amendment or replacement material is of the same general character as the original material; and

(c) a subsequent specified instrument states that the particular amendment or replacement material has legal effect as part of the instrument.

Schedule 1 clause 4: amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 4: amended, on 4 September 2013, by section 17(6) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 4(c): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 4(c): amended, on 4 September 2013, by section 17(6) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

5 Effect of expiry of material incorporated by reference

Material incorporated by reference in a specified instrument that expires, is revoked, or ceases to have effect, ceases to have legal effect as part of the instrument only if a subsequent specified instrument states that the material ceases to have that legal effect.

Schedule 1 clause 5: amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 5: amended, on 4 September 2013, by section 17(6) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

6 Consultation before material incorporated by reference

(1) This clause applies if—

(a) the Bank proposes to incorporate material by reference into any specified instrument; or

(b) the Bank proposes to issue a specified instrument adopting amended or replacement material.

(2) If any of the things referred to in subclause (1) are proposed, the Bank—

(a) must make copies of the material (which in this subclause includes any amended or replacement material) proposed to be incorporated by reference available for inspection during normal working hours at the head office of the Bank; and

(b) must make copies of the material available for purchase at a reasonable price from the head office of the Bank; and

(c) may make copies of the material available in any other way that the Bank considers appropriate in the circumstances (such as on an Internet site); and

(d) must give notice in the *Gazette* of how copies of the material may be inspected and purchased, and how people may make comments on the proposal; and

(e) must allow a reasonable opportunity for people to comment on the proposal; and

(f) must consider any comments made within the time allowed.

(3) A failure to comply with this clause does not invalidate a specified instrument.

Schedule 1 clause 6(1)(a): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 6(1)(b): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

Schedule 1 clause 6(2)(c): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Schedule 1 clause 6(3): amended, on 4 September 2013, by section 17(3) of the Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61).

7 Application of Legislation Act 2019 to material incorporated by reference

Subpart 1 of Part 3 and section 114 of the Legislation Act 2019 do not apply to material that is incorporated by reference in a specified instrument merely because it is incorporated.

Schedule 1 clause 7: replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

8 Application of Regulations (Disallowance) Act 1989 to material incorporated by reference

[Repealed]

Schedule 1 clause 8: repealed, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Schedule 2
General provisions relating to search powers

[Repealed]

s 132

Schedule 2: repealed, on 1 October 2012, by section 265(5) of the Search and Surveillance Act 2012 (2012 No 24).

Schedule 3
Consequential amendments

s 241

Part 1
Amendments to Reserve Bank of New Zealand Act 1989

Paragraph (a) of the definition of **financial institution** in section 2(1): repeal and substitute:

> (a) an insurer that issues, or is liable under, life policies within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010; and includes any branch, division, or office of that insurer; and

Section 2(1): insert in its appropriate alphabetical order:

> **licensed insurer** has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010

Section 39: insert "or the Insurance (Prudential Supervision) Act 2010" after "this Act".

Section 41: repeal and substitute:

> **41 Duties of Governor**
>
> (1) It is the duty of the Governor to ensure that the Bank carries out the functions imposed on it by—
>
> (a) this Act; and
>
> (b) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and
>
> (c) the Insurance (Prudential Supervision) Act 2010.
>
> (2) The Governor has the authority, in the performance of those functions, to act in relation to all matters that are not by this Act, or either of the following Acts, required to be dealt with by the Board:
>
> (a) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009:
>
> (b) the Insurance (Prudential Supervision) Act 2010.

Section 46(1)(b): insert "or of a licensed insurer" after "section 157C".

Section 49(2)(h)(iii): insert "or a licensed insurer" after "section 157C".

Section 50(2)(d)(iii): insert "or a licensed insurer" after "section 157C".

Section 51(5): repeal and substitute:

> (5) Subject to any general or special directions given or conditions attached by the Governor, any person to whom any powers or functions are delegated under this section may exercise them in the same manner and with the same effect as

if they had been conferred directly by this Act or under either of the following Acts, and not by delegation:

(a) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009:

(b) the Insurance (Prudential Supervision) Act 2010.

Section 51(9): repeal and substitute:

(9) To avoid doubt, the Governor's functions and powers include his or her functions and powers under the following Acts:

(a) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009:

(b) the Insurance (Prudential Supervision) Act 2010.

Section 53(3)(f)(iii): insert "or a licensed insurer" after "section 157C".

Section 58(b): insert "or a licensed insurer" after "bank".

Section 68A: insert "or the Insurance (Prudential Supervision) Act 2010" after "this Part".

Section 162AB(1)(a) and (b): insert "and under the Insurance (Prudential Supervision) Act 2010" after "5D".

Part 2
Amendments to other Acts

Accident Compensation Act 2001 (2001 No 49)

Section 123(2)(b)(ii): repeal.

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35)

Section 5: insert in its appropriate alphabetical order:

life insurance policy means a life policy within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010

Paragraph (a)(xii) of the definition of **financial institution** in section 5: repeal and substitute:

(xii) issuing, or undertaking liability under, life insurance policies as an insurer:

Companies Act 1993 (1993 No 105)

Section 2(1): insert in its appropriate alphabetical order:

licensed insurer has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010

Section 223: insert after paragraph (d):

Companies Act 1993 (1993 No 105)—*continued*

(da) if an amalgamating company is a licensed insurer, a copy of the written approval of the Reserve Bank of New Zealand given under section 44 of the Insurance (Prudential Supervision) Act 2010; and

Section 236: insert after subsection (2):

(2A) If the arrangement or amalgamation or compromise involves a transfer or amalgamation that requires the written approval of the Reserve Bank of New Zealand under section 44 of the Insurance (Prudential Supervision) Act 2010, the Court may not make an order under this section unless that approval has been given.

New section 239EA: insert after section 239E:

239EA Voluntary administration of licensed insurers

If a company is a licensed insurer, this Part applies in respect of the insurer subject to subpart 3 of Part 4 of the Insurance (Prudential Supervision) Act 2010.

Section 239L: add:

(3) In the case of a licensed insurer, the Court may appoint an administrator on the application of the Reserve Bank of New Zealand or a person referred to in subsection (1) if—

(a) subsection (2)(a) or (b) apply; or

(b) the insurer is failing to maintain a solvency margin (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010).

New section 240A: insert after section 240:

240A Liquidation of licensed insurers

If a licensed insurer may be put into liquidation under or in accordance with this Part, this Part applies in respect of the insurer subject to subpart 3 of Part 4 of the Insurance (Prudential Supervision) Act 2010.

Section 241(2)(c): add:

(vii) in the case of a licensed insurer, the Reserve Bank of New Zealand; or

Section 258A: repeal and substitute:

258A Duty to report suspected offences

(1) A liquidator of a company who considers that an offence that is material to the liquidation has been committed by the company or any director of the company against this Act or any of the following Acts must report that fact to the Registrar:

(a) the Crimes Act 1961:

Companies Act 1993 (1993 No 105)—*continued*

(b) the Securities Act 1978:

(c) the Securities Markets Act 1988:

(d) the Financial Reporting Act 1993:

(e) the Takeovers Act 1993:

(f) the Insurance (Prudential Supervision) Act 2010.

(2) A report made under subsection (1), and any communications between the liquidator and Registrar relating to that report, are protected by absolute privilege.

(3) If the company is a licensed insurer, a copy of the report made under subsection (1) must be sent to the Reserve Bank of New Zealand.

(4) A copy of a report sent under subsection (3), and any communications between the liquidator and Reserve Bank of New Zealand relating to that report, are protected by absolute privilege.

(5) A liquidator who fails to comply with subsection (1) or (3) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Section 332(b): add "; or" and also the following subparagraph:

(x) enters into a contract of insurance as an insurer with a New Zealand policyholder (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010).

Section 373(2)(ma): repeal and substitute:

(ma) section 258A(5) (which relates to the duty of liquidators to report suspected offences):

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Section 8: repeal and substitute:

8 Consultation with Reserve Bank

(1) For the purposes of this section—

licensed insurer means a licensed insurer within the meaning of the Insurance (Prudential Supervision) Act 2010

registered bank means a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989.

(2) The Registrar must consult the Reserve Bank of New Zealand before—

(a) giving a written notice requiring any licensed insurer or registered bank to supply any information under section 9:

(b) appointing any person to carry out an investigation of the affairs of any licensed insurer or registered bank under section 19:

Corporations (Investigation and Management) Act 1989 (1989 No 11)—*continued*

(c) giving a written notice to any licensed insurer or registered bank that it is considered to be a corporation at risk.

(3) The Securities Commission must consult with the Reserve Bank of New Zealand before making a recommendation to the Minister under section 38 in respect of any licensed insurer or registered bank.

Financial Advisers Act 2008 (2008 No 91)

Definition of **approved rating agency** in section 5: repeal and substitute:

approved rating agency means a rating agency nominated or approved under the Reserve Bank of New Zealand Act 1989 or section 62 of the Insurance (Prudential Supervision) Act 2010

Financial Reporting Act 1993 (1993 No 106)

Section 2(1): insert in its appropriate alphabetical order:

licensed insurer has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010

Section 4(1): insert after paragraph (d):

(da) every licensed insurer (other than a Lloyd's underwriter within the meaning of the Insurance (Prudential Supervision) Act 2010 or an insurer that is included in a class of insurers that is the subject of an exemption under section 238(1)(b) of that Act):

Section 16: insert after subsection (1):

(1A) Section 79 of the Insurance (Prudential Supervision) Act 2010 applies in respect of a reporting entity that is a licensed insurer.

Section 35A: add:

(6) The Securities Commission must not grant an exemption under this section in respect of an issuer that is a licensed insurer.

Financial Transactions Reporting Act 1996 (1996 No 9)

Definition of **life insurance policy** in section 2(1): repeal and substitute:

life insurance policy means a life policy within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010

Section 3(1)(b): repeal and substitute:

(b) an insurer that issues, or is liable under, life insurance policies:

Friendly Societies and Credit Unions Act 1982 (1982 No 118)

Section 2: insert in its appropriate alphabetical order:

licensed insurer has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010

Friendly Societies and Credit Unions Act 1982 (1982 No 118)—*continued*

Section 11: insert after subsection (3):

(3A) Subsection (3) does not apply to a licensed insurer.

Section 42: add:

(4) This section does not apply to a licensed insurer.

Section 74(5): add "or licensed insurers".

Section 76: add:

(5) This section does not apply to a licensed insurer.

Section 77: add as subsection (2):

(2) This section does not apply to a licensed insurer.

Insolvency (Cross-border) Act 2006 (2006 No 57)

Paragraph (h)(i) of article 2 of Schedule 1: repeal and substitute:

(i) a statutory manager appointed under subpart 4 of Part 4 of the Insurance (Prudential Supervision) Act 2010; or

Insurance Law Reform Act 1977 (1977 No 14)

New section 12A: insert after section 12:

12A Application for shares in company not to be contained in proposal for insurance

(1) A form of proposal for insurance that contains or purports to be an application for shares in a company must not be issued by or on behalf of the company.

(2) If any person makes a proposal for insurance to a company, the company must not allot shares to that person without first receiving an application for shares that is contained in a document separate from the proposal for insurance.

(3) If a company contravenes this section,—

(a) the company commits an offence and is liable on summary conviction to a fine not exceeding $10,000:

(b) every director of the company commits an offence and is liable on summary conviction to a fine not exceeding $10,000 if it is proved—

(i) that the act that constituted the offence under paragraph (a) took place with his or her authority, permission, or consent; or

(ii) that he or she—

(A) knew, or could reasonably be expected to have known, that the offence under paragraph (a) was to be or was being committed; and

(B) failed to take reasonable steps to prevent or stop it.

Insurance Law Reform Act 1977 (1977 No 14)—*continued*

(4) Nothing in this section affects the validity of a policy of insurance or of an allotment of shares of a company.

(5) In this section, **company** has the same meaning as in section 2 of the Companies Act 1993.

Compare: 1994 No 117 s 33

Life Insurance Act 1908 (1908 No 105)

Section 64: omit "in the answer of such company given to the tenth question of Schedule 7 hereto".

Life Insurance Amendment Act 1920 (1920 No 84)

Section 11: repeal.

Privacy Act 1993 (1993 No 28)

Part 1 of Schedule 2: insert in its appropriate alphabetical order:

Insurance (Prudential Supervision) Act 2010	Section 226

Summary Proceedings Act 1957 (1957 No 87)

Item relating to the Life Insurance Act 1908 in Part 2 of Schedule 1: repeal.

Part 3
Amendments to regulations

Overseas Investment Regulations 2005 (SR 2005/220)

Regulation 33(1)(k)(ii): revoke and substitute:

(ii) the investment is of funds held in the overseas person's—

(A) Life Insurance Fund within the meaning of section 15 of the Life Insurance Act 1908 if the overseas person carries on any other business; or

(B) statutory fund or funds (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010):

Securities Regulations 2009 (SR 2009/230)

Clause 12(4) of Schedule 5: revoke and substitute:

(4) The date of the latest appointed actuary's report in respect of the life insurance company that has been prepared under section 78 of the Insurance (Prudential Supervision) Act 2010, and the period to which the report relates.

Clause 13(b) of Schedule 5: omit "actuarial" and substitute "appointed actuary's".

Notes

1 General

This is a consolidation of the Insurance (Prudential Supervision) Act 2010 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Deposit Takers Act 2023 (2023 No 35): section 494

Natural Hazards Insurance Act 2023 (2023 No 1): section 163

Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39): section 55(2)

Reserve Bank of New Zealand Act 2021 (2021 No 31): section 300(1)

Secondary Legislation Act 2021 (2021 No 7): section 3

Privacy Act 2020 (2020 No 31): section 217

Kāinga Ora–Homes and Communities Act 2019 (2019 No 50): section 33

Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28): section 58

Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Act 2018 (2018 No 17): section 56

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(b)

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 132): section 126

Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103): section 12

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Insurance (Prudential Supervision) Amendment Act 2013 (2013 No 61)

Legislation Act 2012 (2012 No 119): section 77(3)

Search and Surveillance Act 2012 (2012 No 24): section 265

Criminal Procedure Act 2011 (2011 No 81): section 413

Insurance (Prudential Supervision) Act Commencement Order (No 2) 2010 (SR 2010/446)

Insurance (Prudential Supervision) Act Commencement Order 2010 (SR 2010/324)

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2025