TO: THE RESERVE BANK OF NEW ZEALAND

SUBMISSION ON ISSUES PAPER – REVIEW
OF THE INSURANCE (PRUDENTIAL
SUPERVISION) ACT 2010

30 JUNE 2017
INTRODUCTION


Our submission follows the structure of the Reserve Bank’s Issues Paper. We have no objection to our submission being published on the Reserve Bank’s website.

This submission reflects the views of the following specialists in our insurance sector regulation team:
ABOUT CHAPMAN TRIPP


5 Our clients include major insurers, reinsurers, banks, brokers, adviser networks and the Earthquake Commission.

6 We have advised our clients in relation to the full spectrum of IPSA compliance issues and understand the issues, challenges and frustrations the industry has faced.

7 We have summarised the key themes from our submission below, before turning to answer the questions in the Issues Paper in the Schedule that follows.

KEY POINTS

Definition of “carrying on insurance business in New Zealand” is outdated

8 The current jurisdictional scope, which requires some physical presence in New Zealand according to case law, should be reviewed in light of changes in technology and the increase in online offerings of insurance products.

   In our view, the scope should instead be focused on the degree and scale of the insurer’s business with New Zealand policyholders. To counter-balance the disincentive created by the additional reach of legislation, relief for compliance overseas and lesser or no New Zealand licensing requirements for reinsurers should be considered.

   This, coupled with greater exemption powers and mutual recognition of overseas prudential regimes (discussed below), would enhance and clarify New Zealand’s prudential regulatory perimeter, decrease compliance costs for exempt insurers, improve access to the New Zealand market for overseas insurers and provide clarity and greater consistency to the current interpretations.

Broader exemption powers for Reserve Bank

9 "One size fits all" rules are not appropriate for the diverse New Zealand insurance market.

A broad exemption regime would allow the Reserve Bank to make class or individual exemptions where compliance would be unnecessarily onerous or burdensome.

This would provide flexibility, allow the Reserve Bank to
consider individual circumstances and make it easier to deal with new "Insure-tech" products and distribution models as they emerge.

Any exemption would need to be consistent with the purposes of IPSA and no broader than reasonably necessary.

**Greater mutual recognition for overseas insurers**

10 There should be fewer New Zealand compliance requirements for overseas insurers licensed and adequately prudentially supervised in their home jurisdiction, particularly if they do not reside in New Zealand and are regulated solely because they offer insurance products to New Zealand customers from offshore.

This would make the New Zealand market more attractive to overseas operators and reduce the costs of supervision duplication.

**Penalties not always suitable**

11 The review should consider the suitability of director penalties, the adequacy of director defences, the nature of penalties generally, and the maximum penalties for certain compliance failures.

The FMCA reforms addressed excessive director potential liability, and could provide the model.

The FMCA has raised the threshold for substantial director liability to recklessness. It also provides for infringement notices and warnings, stop orders and direction orders for lower tier 'administrative' contraventions.

Directors should not be personally liable for oversights in disclosing statutory fund names and financial strength ratings to individual policy holders, or website omissions.

**Directors should be able to rely on employees**

12 The IPSA defence for relying on another person currently excludes other directors, an employee or an agent of the insurer charged with the offence.

This limitation is not suitable in all cases. There are situations where the Board should be able to rely on employees, particularly for more administrative compliance matters.
Financial strength rating disclosure requirements unduly onerous

13 The insurer's financial strength rating (FSR) should not need to be disclosed in writing to every policyholder before entering into or renewing a contract of insurance.

Website publication should suffice.

Insurers incur significant costs in rewriting and printing policy documentation when there is a change in their FSR.

Distress management tools should remain flexible

14 The Reserve Bank has sufficient distress management capability under IPSA to supervise and manage a distressed insurer.

The legislation should avoid being excessively prescriptive and provide flexibility so that responses to insurers in distress can be tailored to achieve an optimal outcome.
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DETAILED SUBMISSIONS

PART 1 – ENTITIES REQUIRED TO BE LICENSED

Q1 Do you have any comments to make on the discussion in Part 1 of the Issues Paper?

1 Yes – We support the Reserve Bank’s philosophy of prudential supervision and its proposed approach to reviewing IPSA.

Q2 Do you consider that the Review should assess the current scope of IPSA in terms of the nature of insurance contracts or entities that are subject to the legislation?

The definition of “carrying on insurance business in New Zealand” is outdated and should be reviewed

2 The current jurisdictional scope, which requires some physical presence in New Zealand according to case law, should be reviewed in light of changes in technology and the increase in online offerings of insurance products.

3 In our view, the Companies Act test for ‘carrying on business in New Zealand’ is not suitable as a licensing boundary because it places excessive emphasis on the local presence and operations of the insurer.¹

4 The scope should be clarified so instead it is focused on the degree and scale of the insurer’s business with New Zealand policyholders, irrespective of where business is conducted.

5 Relief for compliance overseas and lesser New Zealand licensing requirements for reinsurers should be considered to counter-balance the disincentive created by the additional reach of the legislation.

6 This could be achieved via a broad definition of ‘carrying on insurance business in New Zealand’ that does not refer to the Companies Act test. The test could then carve out and exempt certain types of insurance business that would not have a significant prudential impact on the New Zealand insurance market, or which may already be prudentially regulated in a recognised offshore jurisdiction.

7 The test should also be reviewed to reflect technology changes, and the increasing development of “Insure-tech” products. As discussed in response to Question 3, an

¹ The IPSA test refers to the ‘carrying on business’ test under section 332 of the Companies Act 1993. Given the broad terms of section 332 of the Act, an assessment of whether an insurer is ‘carrying on business’ in New Zealand is a question of fact to be determined in light of the circumstances and by reference to several judicial tests which focus on the size and scale of local business operations.
exemption regime is needed to (amongst other things) deal with future insurance products, and to facilitate innovation in the New Zealand insurance market.

8 New Zealand’s exemptions should also recognise offshore prudential regulatory regimes with similar characteristics (such as Australia), and should not place unduly onerous licensing and regulatory requirements on offshore insurers who are already subject to significant prudential regulation in their home jurisdictions.

9 Adopting this model would ensure New Zealand’s regime can be tailored to require firms to be licensed only where they carry on insurance business that has a real and significant impact on New Zealand (as opposed to the existing ‘presence’ based test).

Q3 Do you consider that there are entities where the current provisions of the legislation result in inappropriate compliance costs or inappropriate regulatory obligations relative to the risks being addressed by the legislative framework?

The Reserve Bank should have broader powers to grant exemptions

10 The Reserve Bank should be granted a broad exemption power to modify the effect of and enhance the existing prudential supervision regime.²

11 This would provide flexibility, allow the Reserve Bank to consider individual circumstances and make it easier to deal with new “insure-tech” products and distribution models as they emerge.

12 A broad exemption regime would allow the Reserve Bank to make class or individual exemptions where compliance with IPSA or its regulations would be unduly onerous or burdensome for the applicant or a class of insurers or types of insurance contract.

13 The Reserve Bank should be empowered to place terms and conditions on any exemptions as it sees fit, provided they are consistent with the purposes of the Act, promote the maintenance of a sound and efficient insurance sector and are not broader than reasonably necessary.

14 Section 7 of the Australian Insurance Act 1973 may offer a useful model. It provides APRA with broad powers to determine that certain provisions do not apply to an insurer or a class of insurers while the determination is in force.³

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² We also support the continuation of the existing exemption making power in section 232 of IPSA, which we consider remains appropriate.

³ These provisions include any provision of Part III – Authorisation to carry on insurance business (other than the provisions in relation to transfers and amalgamations).
**IPSA should contain a mutual recognition regime for overseas insurers**

15 Mutual recognition of Australia’s prudential and supervisory regime would recognise that it is at least as satisfactory as New Zealand’s own regime, and reduce duplicity of regulation (provided safeguards are established to protect New Zealand policyholders).

16 While mutual recognition of Australia’s prudential regime is an obvious first choice, we see no reason why the mutual recognition regime could not be generalised to allow for mutual recognition of other comparable overseas prudential supervision regimes (where the prudential and supervisory regime is at least as satisfactory as that in New Zealand).

17 The benefits of mutual recognition and the standardisation of prudential regulation and supervision may include:

17.1 reduced compliance costs;

17.2 greater reciprocal access to insurance markets and fewer barriers to entry;

17.3 greater certainty of regulatory processes between countries;

17.4 greater ability to do business and increased risk diversification;

17.5 lower supervisory administration cost through taking advantage of comparable supervisory regimes in countries with insurers or groups are registered;

17.6 more resources available to devote to domestic supervision; and

17.7 improved collaboration with supervisory counterparts in other jurisdictions.

18 Our experience is that the general mutual recognition regime under the FMCA (and its predecessor regimes through regulations and class exemptions) works well, while ensuring that New Zealand investors are still sufficiently protected through warning statements and New Zealand registration and disclosure requirements.  

19 Mutual recognition would be particularly beneficial for reinsurers and would enhance New Zealand licensed insurers’ access to reinsurance support.

20 A useful model is found in the International Association of Insurance Supervisors (IAIS) Discussion Paper on the Mutual Recognition of Reinsurance Supervision in

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4 The reciprocity of any mutual recognition regime under IPSA could be explored with APRA, if there is an appetite for New Zealand licensed insurers to underwrite policies for Australian policyholders.
which it identified the minimum requirements or standards that supervisors might consider to allow mutual recognition between reinsurance supervisors.\footnote{IAIS Discussion Paper on the Mutual Recognition of Reinsurance Supervision, October 2007.}

21 Another alternative could be for the Reserve Bank to adopt a mutual recognition model equivalent to that used in Europe under the Solvency II Directive.

Q4 Are you aware of any currently non-licensed (under IPSA) insurance business activity in New Zealand that you consider should be within the scope of regulation in some form to enhance the effectiveness of the framework?

22 No submission.

**PART 2 – OVERSEAS INSURERS**

Q5 Do you agree that overseas insurers provide valuable support to the New Zealand insurance market?

Yes, the ability for New Zealand policyholders (both individual and commercial) to continue to obtain appropriate insurance cover for their personal and business pursuits, and for insurers to continue to obtain appropriate reinsurance cover, is important for New Zealand.

23 As the Reserve Bank notes in the Issues Paper, the New Zealand insurance industry is strongly supported by overseas insurers and reinsurers, including through the ownership of New Zealand branches and incorporated insurers and the provision of reinsurance.

24 In addition, our engagement with insurance brokers supports the Reserve Bank’s assertion that there are particular specialist ‘niche’ areas in the New Zealand insurance market which are underwritten only by overseas insurers (some who are carrying on insurance business in NZ, some who are not, given the occasional nature of contracts of insurance underwritten for New Zealand policyholders in these areas).

25 Continuing recourse to the assets and solvency of overseas insurers and reinsurers is, we believe, necessary for the New Zealand insurance market. This has been demonstrated by the claims resulting from recent natural disasters.
Q6  Do you consider that the Review should reassess the application of the legislation to insurers operating as branches?

Yes – Provided any review should not consider a requirement for mandatory local incorporation, which would be inappropriate in the context of the New Zealand insurance market

26 The current ability for overseas insurers to carry on insurance business in New Zealand utilising a branch structure should continue. Having New Zealand branches of large offshore insurers diversifies New Zealand’s country risk.


28 The IAIS Issues Paper makes the point that the only two countries requiring local incorporation of insurers are Russia and South Africa. New Zealand should not follow suit – particularly given its relatively small insurance market and relative prevalence of overseas insurers operating as branches.

29 We also refer to our submissions in relation to a mutual recognition regime for overseas insurers in response to Question 3.

Assessment of equivalence of law and regulatory requirements of home jurisdictions of overseas insurers

30 Overseas licensed insurers subject to satisfactory regulation and supervision in their home jurisdiction should continue to have available to them certain exemptions from compliance with the equivalent New Zealand requirements, reducing the duplication of supervisory resources.

31 However, we submit that it would be timely to consider as part of the review the prescribed jurisdictions included in Regulation 5 of the Insurance (Prudential Supervision) Regulations 2010 (Regulations). We understand that this list was compiled based on individual applications received by the Reserve Bank at the time IPSA was drafted.

32 There are likely to be other European countries and US states with equivalent prudential regulation and supervision to New Zealand which could be considered for inclusion in the Regulations. The level of proof required for those overseas insurers applying for a licence in a non-listed jurisdiction is considerable, and may be a deterrent to market entry.
Q7  In the context of overseas insurers, what do you consider are the most significant risks posed to the New Zealand economy or New Zealand policyholders that need to be taken into account?

33  No submission.

**PART 3 – STATUTORY FUNDS AND ENHANCED PROTECTION OF LIFE INSURANCE POLICYHOLDERS**

Q8  Do you consider that there is opportunity to clarify or enhanced the effectiveness of the statutory fund framework?

Clarification of the application of the duties of the life insurer (section 87) and the directors of the life insurer (section 105) in relation to statutory funds would be useful.

34  Our experience is that there can be uncertainty in relation to application of these duties, particularly in relation to what qualifies as a “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” (in which case priority must be given to the interests of policyholders). This clarification could be appropriately addressed through additional guidance from the Reserve Bank, rather than a change to IPSA.

35  The Reserve Bank may wish to reconsider the requirement for statutory funds for pure-risk life insurers. If there is no savings component, then the statutory fund is an excessive burden to protect the unexpired premium.

Q9  In the context of overseas insurers, do you consider a statutory fund framework may help protect the interests of New Zealand policyholders?

36  No submission.

**PART 4 – ROLE OF KEY OFFICERS AND KEY CONTROL FUNCTIONS**

Q10  Do you consider that the expectations placed on the directors, chief executive officer, chief financial officer or appointed actuary of insurers, would benefit from being considered further within the review? This may include clarifications of current expectations or expansion of responsibilities.

No, IPSA already paces significant responsibilities on Directors

37  We do not support placing expanded responsibilities on directors or senior managers as part of the review. IPSA imposes significant burdens on directors and significant sanctions for contraventions.
Rather than expanding the already extensive liability and deterrence model for directors under IPSA, the Reserve Bank should take steps to clarify its expectations of directors through improved guidance and a focus on minimum standards of conduct, capability and governance.

Q11 Do you consider that the Review should encompass further consideration of an insurer’s key control functions to promote effective risk management and consistent application of requirements across the sector?

No, the levels of prescription in IPSA provide an appropriate degree of flexibility. The Reserve Bank should set out any desired changes through improved Guidelines.

The Reserve Bank should achieve any desired enhancements to insurers’ risk management programmes and internal control functions by issuing updated guidelines.

We consider that:

40.1 the existing IPSA risk management framework already adequately sets out the key risks that insurers must identify and manage on an ongoing basis; and

40.2 any deficiencies that the Reserve Bank may have found in its review of insurers’ risk management frameworks could be remediated by issuing updated guidelines, or through amendments to the conditions of any particular insurer’s licence.

We agree with the comment in the Issues Paper at page 24 that any additional requirements that the Reserve Bank seeks to impose should be sufficiently flexible to recognise the diversity of insurers within the New Zealand market (both in terms of size and in terms of jurisdiction).

We consider that the additional risk management measures noted in the IMF FSAP Report are unduly onerous – particularly for smaller insurers, and excessively prescriptive – particularly for large insurers, whose risk management frameworks will already contain rigorous processes for risk identification, risk retention, risk management strategies and asset-liability management.

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PART 5 – ENFORCEMENT REGIMES

Q12 Do you consider that there may be opportunities to enhance the enforcement framework?

The IPSA Enforcement Framework imposes penalties that are disproportionate to some breaches

43 The Reserve Bank should reduce some of the maximum penalties for certain compliance failures where the maximum penalties are disproportionate to the significance of the breaches.

44 We consider that the following penalties are disproportionate to the magnitude of the potential failure and should be revisited, such as liability upon conviction to fines of up to $500,000:

44.1 for a failure to comply with the fit and proper requirements under the Act (including failing to obtain the Reserve Bank’s approval for a material change to its policy) in section 34 of the Act;

44.2 for failing to comply with a requirement to provide certificates in time for new directors and officers in section 37 of the Act;

44.3 for failing to comply with the financial strength rating disclosure requirements in sections 63 and 67 to 70 of the Act; and

44.4 for a failure to comply with any risk management requirement (including failing to obtain the Reserve Bank’s approval for a material change to its policy) in section 75 of the Act.

45 We consider that the maximum fines for the offences listed above are disproportionate to some of the circumstances in which an insurer might fail to comply with the provision, particularly due to administrative errors or compliance with filing time limit requirements.

46 These disproportionate penalties may also act as a disincentive to the Reserve Bank from taking enforcement action for certain ‘low level’ infringements, given the resources required to prosecute these offences. An administrative penalty regime would be more effective than incurring potentially significant criminal liability for low-level administrative errors.

The Reserve Bank’s enforcement toolbox should include infringement notices, warnings and undertakings

47 The Reserve Bank should introduce an infringement notice and warning, stop order and direction order regime similar to the FMCA regime for the lower tier of
'administrative’ contraventions. These tools might provide the Reserve Bank with a more appropriate tool to encourage compliance than the excessive criminal sanctions that currently exist in the legislation (on which we comment below).

48 The Reserve Bank should ensure that any administrative notice or order regime contains provisions that give the affected party an opportunity to make written submissions and an opportunity to be heard prior to the notice or order becoming effective.7

Director liability for statutory fund losses imposes a disproportionate and indeterminate penalty

49 The Reserve Bank should align the statutory fund civil liability provisions with all other civil liability provisions in IPSA by imposing a maximum level of civil liability for statutory fund losses by a director.

50 Under sections 107 and 117 of IPSA, directors can become jointly and severally liable for an amount equal to the loss to a statutory fund in the event of a liquidation or receipt of a Reserve Bank notice. There is a limited defence if directors can prove that they used due diligence to prevent the occurrence of a contravention or to ensure that the insurer complied with the Reserve Bank’s written notice.

51 There is no limit for director liability in respect of a loss to a statutory fund.8 Imposing indeterminate liability in this way is unlikely to achieve any additional deterrence benefits, both because directors’ maximum liability is unknowable, and because liability may lead to the directors declaring bankruptcy. The risk of liability under this provision has resulted in some life insurers choosing not to enter, or to entirely exit, the New Zealand market.

PART 6 – DISTRESS MANAGEMENT

Q13 Do you consider the distress management framework within IPSA could be considered within the Review to enhance the expected effectiveness of the framework, particularly for smaller licensed insurers?

No, the IPSA distress management framework is adequate and already contains a wide range of ‘top of the cliff’ tools for insurers in distress

52 Overall, we consider that the Reserve Bank has sufficient distress management tools to supervise and manage a distressed insurer. The RBNZ should avoid creating an overly prescriptive framework for distress management to ensure it can flexibly respond to insurers in distress.

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7 Sections 476 and 477 of the FMCA are an example of such provisions.
8 By contrast, the life insurer is liable, on conviction, to a fine not exceeding $500,000 for any contravention.
IPSA already affords the Reserve Bank a wide range of powers to deal with insurers in distress, ranging from the power to:

53.1 require insurers to prepare recovery plans;

53.2 issue directions in respect of specified matters and remove directors;

53.3 apply to the High Court for the appointment of a liquidator or administrator (or approving any such voluntary measures), and/or the reduction in the value of contracts; or

53.4 recommend that statutory management be initiated for an insurer and associated persons.

If the Reserve Bank intends to introduce additional distress management tools for smaller insurers, then it should carefully consider including appropriate protections against Reserve Bank overreach. There is a risk that the use of enhanced powers in a distress scenario could exacerbate rather than assist with the resolution of a distress management event.

Q14 Are there any areas of the framework that may pose particular concerns when considering overseas insurers (branch operations)?

No, there will always be trade-offs on cross border protections. IPSA and New Zealand’s corporate and insolvency laws are adequate

The existing provisions of IPSA and New Zealand’s wider corporate and insolvency laws are adequate to protect the interests of New Zealand policyholders in the event of a cross-border insolvency.

We support the Reserve Bank’s existing approach to managing the insolvency risk of overseas insurer branch failure through existing licensing requirements and by requiring (as it does presently) certain overseas insurers – on a case-by-case basis – to deposit a set amount of capital with a custodian. We believe this approach appropriately balances the trade-off between freedom of movement for overseas branch insurers as against the need to protect New Zealand policyholders, and should be retained.

Financial commitment requirements should continue to be set on a case-by-case basis

We do not support the introduction of minimum deposited asset requirements for overseas insurers (beyond the current case-by-case ‘condition of licence’ regime), because applying a universal minimum deposited assets requirement would increase the cost of doing business in New Zealand, would be inflexible, and may be a
disincentive to overseas insurers offering insurance in New Zealand, with negative impacts to risk concentration, freedom of movement and consumer choice.

**Assets backing liabilities or tied asset requirements should not be imposed**

58 We do not support the introduction of assets backing insurance liabilities requirements, such as the 'assets in Australia' requirements in the Australian Insurance Act 1973.9

59 These requirements have not been implemented in jurisdictions of comparable size to New Zealand, deliver limited policyholder protection relative to their cost, involve making complex distinctions between local and foreign assets (particularly for reinsurance), and impose significant capital burdens on overseas insurers, which would increase costs and may lead to overseas insurers exiting the New Zealand market.

60 Overall, we do not consider that there are any unique or specific concerns as to the effectiveness of New Zealand’s distress management provisions operating in conjunction with overseas insolvency law or regulatory provisions (beyond those common to any other jurisdiction).

**PART 7 – SOLVENCY REQUIREMENTS**

**Q15** Do you consider that the current approach to prudential capital requirements by reference to a solvency margin and conditions of licence should be within the scope of the review?

**Yes, the current approach to prudential capital requirements should be within the scope of the Review**

61 We support a move toward a more transparent regime than the existing use of conditions of licences to apply and vary minimum solvency margin requirements for insurers.

62 Insurers will be concerned if any capital proposals result in higher capital requirements. The Reserve Bank should not take steps to change or introduce more burdensome risk based capital requirements.

63 The introduction of a broad exemption regime to IPSA (discussed in Question 3 above) would be useful for enabling flexibility in this area when appropriate, without

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9 In Australia, section 116 of the Insurance Act 1973 (Cth) limits the pari passu principle by providing that in the winding up of a general insurer, the assets in Australia shall not be applied in the discharge of its liabilities other than its liabilities in Australia unless all the Australian liabilities have first been discharged. APRA Prudential Standard GPS 120 defines what constitutes 'Assets in Australia' and is designed to ensure that the total value of assets held within the jurisdictional reach of APRA and Australian courts is sufficient to meet a general insurer's Australian liabilities. Section 28 of the Act requires insurers to hold assets in Australia greater than their liabilities in Australia.
the need to prepare or comply with additional Solvency Standards (which is time consuming and costly).

64 There should be a change to the Reserve Bank’s solvency standards to enable friendly society insurers to issue securities (as credit unions currently can do) to support their capital needs. This will require additional empowering legislation.

Q16 Do you consider that consideration should be given to clarifying the RBNZ’s prudential response to deteriorations in reported solvency levels?

Yes, but the RBNZ should ensure that any clarification preserves the RBNZ’s ability to respond flexibly to any gradual deterioration of an insurer’s reported solvency levels.

65 The RBNZ should identify and clarify the supervisory measures that can be taken in a deterioration of an insurer’s solvency levels, but any list of measures should not be exhaustive. The RBNZ should maintain a degree of flexibility, as it is not possible to foresee what situations could arise, and which measures could then be appropriate to ensure policyholder protection.

66 As the Issues Paper notes, the existing IPSA framework provides significant discretion to the RBNZ to respond to deterioration in a licensed insurer’s solvency margin. The existing framework preserves flexibility and empowers the RBNZ to take the individual insurer’s circumstances into account when considering an appropriate supervisory response, but creates uncertainty as to how the RBNZ would respond in any given case to the deterioration of an insurer’s solvency levels.

PART 8 – SUPERVISORY PROCESSES – REGULATORY APPROVALS

Q17 Do you consider the Review should reassess the current framework for approval of material transactions and policy changes?

In our experience the current framework is generally working well, but some improvements could be made to the change of control notification regime.

67 Change of control transactions which have little impact on the licensed insurer should not necessitate a full reconsideration by the Reserve Bank as to whether or not the licensed insurer continues to satisfy the criteria in section 19(1)(a) to (m) of IPSA.

68 In our experience, there can be unnecessary time and cost expended in preparing a lengthy notification re-stating information which is not subject to change. The Reserve Bank should only be concerned if the change of control results in a real impact on the licensed insurer. A change of control should not be used as an opportunity to seek to re-examine the operations and compliance of the licensed
insurer, which were approved by the Reserve Bank through the original licensing application process.

69 The Reserve Bank’s considerations should be limited to the shareholder level, with a focus on the character of the proposed new shareholder, and to being satisfied with the governance of the licensed insurer post-transaction (to the extent there are any changes proposed).

70 The Reserve Bank could consider linking the need for a notification in the event of a change of control to the level of control being obtained. For example, a full review of a licensed insurer’s ability to continue to comply with the section 19 criteria would be triggered only if there was a significant change of control, or the change of control would result in the licensed insurer’s operations and compliance changing significantly from the status quo.

71 The Reserve Bank could also consider an exemption for intra-group restructurings, where the ownership of the licensed insurer remains within the existing group structure.

Q18 Do you consider that approval by the Reserve Bank is more or less effective than alternative mechanisms e.g. court based systems?

The current Reserve Bank approval regime is appropriate for the New Zealand insurance market

72 The current regime facilitates transactions in the New Zealand insurance market, and we consider it remains appropriate.

73 The existing Reserve Bank approval regime avoids court approval, which can be a lengthy and costly process, and is not particularly effective protection for policyholders. We consider the Reserve Bank approval process provides adequate protections to policyholders, while ensuring that transactions are not unduly delayed.

74 Our experience is that the transfer and amalgamation provisions in sections 44 to 53 of IPSA work extremely well, and the statutory novation provisions are of great assistance, particularly following the increased flexibility introduced following the initial submission process prior to IPSA coming into force. The Reserve Bank should be commended for adopting submissions that led to the effectiveness of these sections when IPSA was developed.

75 A court based system (for example, the Australian transfer and amalgamation confirmation regime under the Australian Insurance Act 1973) would increase both the cost and time required to complete transactions in the New Zealand insurance market, with limited benefit to policyholders, and could deter potential participants
from entering the market, or existing market participants from growing their existing book through acquisitions.

However, the existing transfer and amalgamation approval requirements could be streamlined for intra-group restructures, where the insurance business being transferred remains within the existing group structure. Intra-group transfers should not be used as an opportunity to seek to re-examine the operations and compliance of the licensed insurers involved.

PART 9 – GENERAL DISCLOSURE AND FINANCIAL STRENGTH RATING REQUIREMENTS

Q19 Are there any aspects of the current disclosure requirements that you consider do not provide useful information or are unduly onerous or costly to prepare?

Financial strength rating and statutory fund disclosure requirements unduly onerous

The current requirements under IPSA to disclose the insurer’s FSR in writing to every policyholder before entering into or renewing a contract of insurance (and a policyholder’s ability to cancel if disclosure is not made) are unduly onerous. Disclosure on the insurer’s website is sufficient to ensure that policyholders are aware of the insurer’s current FSR, either directly or through dissemination of the information through the media, electronic media and word-of-mouth.

Similarly, disclosures in relation to statutory funds should be website based, rather than being required to be included in a policy document as is currently the case. This is not the most important information for policyholders.

We submit also that statutory fund disclosure should be required only when a life insurer has more than one statutory fund.

Q20 Do you consider that there is information that is not currently required to be disclosed that would be beneficial to market participants?

There is a risk that additional prudential disclosure may detract from information that is more important to policyholders, i.e. how their policy will respond in the event of a claim.
PART 10 – APPROPRIATE REGULATORY MECHANISMS

Q21 Do you consider that the Reserve Bank (or other authority) has a role in providing appropriate industry data to the market? Please provide commentary in support of your view.

81 No submission.

Q22 Do you consider that the Review should reassess the manner in which requirements are currently specified and the mix between requirements set out in legislation, standards or guidance?

Streamlining the current requirements would be of assistance

82 Capturing requirements consistently in appropriate legislative instruments and guidance would assist in clarifying compliance obligations for insurers, and support the consistent application of the IPSA regime by the Reserve Bank.

83 We consider, in particular, that there is merit in clarifying governance requirements and how these will be applied, provided the current flexibility in application is retained. We do not think a “one size fits all” approach to governance is appropriate for the diverse New Zealand insurance market.

Q23 Are there any aspects of the current requirements that you consider would be better specified using different regulatory tools?

84 The Reserve Bank should have broader powers to grant exemptions. Please refer to submission in response to Question 3 above.
PART 11 – OTHER MATTERS

Q24 Are there any further issues you would like to raise that you consider should be within scope of the Review?

85 Yes, the Reserve Bank should consider the ability for New Zealand licensed insurers to offer insurance offshore and for New Zealand to be a global insurance hub as part of the review.

86 Related to this, please refer to our submission in relation to mutual recognition in Question 3 above.

87 Please also see our comments in relation to the ability for friendly societies to meet their IPSA capital requirements in paragraph 64.

Q25 Are there any areas of the legislation that you consider are now redundant or you feel could have clearer drafting or require technical corrections?

88 No submission.

Q26 Are there any areas of the legislation that you consider, having regard to the purposes of the legislation, unduly restrict competition or innovation within the New Zealand insurance market? Please provide commentary in support of your view.

89 No submission.