

# **An Independent Review for the RBNZ of the Supervision of CBL Insurance Ltd**

## **Terms of Reference**

### **Background**

A major regulatory event in New Zealand has been the failure of licensed insurer CBL Insurance Limited (CBLI). The Reserve Bank of New Zealand (the Bank), in its capacity as prudential supervisor of the insurance sector licensed, supervised, issued regulatory directions, and ultimately applied for the liquidation of CBLI.

The cessation of business by CBLI, its placement into liquidation and the events that led to its liquidation have caused the Bank to review its prudential regulatory and supervisory arrangements for insurance companies licensed by the Bank. The Bank acknowledges the public interest in these events. To this end the Bank has commissioned an independent review into its supervisory actions and decisions pertaining to CBLI and the associated regulatory framework.

The review will assess supervisory actions taken and not taken by the Bank, including formal decisions made under the Insurance (Prudential Supervision) Act 2010 (IPSA) such as the initial licensing of CBLI, directions given and treatment of breaches of licensing conditions and directions.

### **Purpose of the Review**

The objectives of an independent review are to identify the lessons of this important episode (both the positives and the negatives) by opening the Bank's processes to independent scrutiny and, in doing so, to also provide relevant information to the public and stakeholders.

The purpose is to provide an independent and expert perspective on how best to strengthen the regulatory and supervisory framework for the future, and in particular will:

- Identify any shortcomings and positives in the Bank's supervisory practices and its critical judgements.
- Identify any constraints or areas for enhancement in the legislative and regulatory framework in which the Bank was operating.
- Assist understanding by key stakeholders and the wider public on the Bank's role and activities as a prudential supervisor.

### **Scope**

The review will cover all phases of the recent history of CBLI from pre-licensing in 2011 through to licensing in 2013, development of the company from 2014 to the listing of its parent company CBL Corporation Ltd in 2015, to substantial and fast-growing specialist international reinsurer in 2016, followed in 2017 by the unravelling of the company's business and its ultimate liquidation at the instigation of the Bank in 2018.

The review will examine and consider questions associated with the Bank's supervision of the company during each of these phases. It will include, but not be limited to–

- Whether CBLI should or could have been refused a licence in 2013
- Whether the Bank should have imposed more or different conditions on the company when granting its licence
- Whether there were legislative or other constraints on the Bank that limited its ability to conduct investigations and impose conditions on the company that would have led to

greater knowledge and assurance as to whether the company was operating soundly as an insurer

- Whether the Bank's actions were fair and reasonable to the company (and its group members), in light of the information the Bank was receiving from the company or otherwise had available. This includes the reasons the Bank gave to the company for its actions, such as directions and the application for interim liquidation, and whether it kept an open mind as to the likely outcome of investigations.
- Whether the Bank's supervisory activities were sufficiently well founded and pro-active after licensing, including identifying risks within the CBL business and putting constraints on the company that would protect its solvency position and ultimately avoid closure and liquidation.
- Whether the approach taken by the Bank to the confidentiality of its regulatory actions was appropriate.
- The degree of reliance on the Appointed Actuary (AA) and the interactions with the AA.
- The relevance of supervisory powers at group level as well as at licensed company level.

The litigation processes leading to the appointment of interim liquidators in February 2018 and permanent liquidators in November 2018 are outside the scope of the review.

### **Reviewers**

The review will be conducted by:

- John Trowbridge, former Member of the Australian Prudential Regulation Authority (APRA) responsible for insurance, and experienced insurance actuary and management consultant; and
- Mary Scholtens QC, experienced public and administrative counsel with expertise in regulatory decision-making processes.

### **Process**

The reviewers will investigate the Bank's processes over the relevant period. They will have access to any documents they require, and all Bank staff will co-operate with their requests for information.

The reviewers will act in accordance with the principles of natural justice where these apply. In particular, it is anticipated that any proposed adverse findings will be made available to affected persons for submission and consideration before a final view is determined by the reviewers.

The reviewers will deliver a final report to the Bank outlining their findings by 28 February 2019.

### **Publication**

The results of the review will be made public by the Bank. The reviewers will be available to address media queries on their report at that point, but will not take media queries before then.

November 2018