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SUBMISSION ON THE REVIEW OF THE INSURANCE (PRUDENTIAL SUPERVISION) ACT 2010 – OPTIONS PAPER 4: GOVERNANCE, SUPERVISORY PROCESSES AND DISCLOSURE – AIA NEW ZEALAND LIMITED

This submission is made on behalf of AIA New Zealand Limited and its related entities (together **AIA NZ**). It responds to the Reserve Bank of New Zealand – Te Pūtea Matua's (**Reserve Bank**) November 2022 Options Paper 4: Governance, supervisory processes, and disclosure (**Options Paper**) which is part of the Reserve Bank's wider review of the Insurance (Prudential Supervision) Act 2010 (**IPSA**).

About AIA NZ

AIA NZ is a member of the AIA Group, which comprises the largest independent publicly listed pan-Asian life insurance group. AIA Group has a presence in 18 markets in Asia-Pacific and is listed on the Main Board of The Stock Exchange of Hong Kong. It is a market leader in the Asia-Pacific region (excluding Japan) based on life insurance premiums and holds leading positions across the majority of its markets.

Established in New Zealand in 1981, AIA NZ is New Zealand's largest life insurer and has been in business in New Zealand for over 40 years. AIA NZ's vision is to champion New Zealand to be the healthiest and best protected nation in the world.

AIA NZ offers a range of life and health insurance products that meet the needs of over 800,000 New Zealanders. AIA NZ is committed to an operating philosophy of *Doing the Right Thing, in the Right Way, with the Right People*.

AIA NZ is a prominent member of the Financial Services Council (**FSC**).

Key points of this submission:

We continue to support the Reserve Bank's review of IPSA. We agree that it is important to reconsider the key provisions of IPSA reflecting events which have followed its implementation and other regulatory developments impacting licensed insurers since its introduction.

Our submission is set out in the appendix. We are very supportive of the Reserve Bank retaining its risk-based approach to these matters, and many of our submission points are directed at better reflecting that risk-based approach in the proposals. In summary, our key points are:

- AIA NZ is broadly supportive of extending Reserve Bank approvals to cover the appointment of relevant officers (Chief Executive Officer (**CEO**), Chief Financial Officer (**CFO**), and the Appointed Actuary (**AA**)). But we do not support the introduction of Reserve Bank approval for the appointment of senior managers on the same basis as for directors and relevant officers under the proposed changes. Such approval requirements would likely be subjective and could constrain recruitment and movement of key talent into senior leadership roles in New Zealand's comparatively small market.

- AIA NZ believes that the current duties under IPSA and under common law are appropriate for directors and those overriding directors' duties are the best means of ensuring compliance with prudential regulation. We do not believe a case has been made out for a wider set of directors' duties, to reflect the potential impact of insurer distress on policyholders and the wider economy, because we consider the existing director duties under IPSA are adequate to protect against insurer distress.

- We do not consider it appropriate or necessary to impose an additional duty on AAs to identify and present policyholder interests. We consider this right is inherent in existing legislation and well understood by the industry. Moreover, the Solvency Standard states that AAs must comply with professional standards, and under the NZSA professional standards for life insurers the AA should already consider all relevant aspects of policyholder interests.

- Imposing an obligation on auditors to notify the Reserve Bank should they become aware that an insurer is failing to comply with its accounting and financial reporting obligations requirement will be fraught with difficulty and could compromise the relationship (and exchange of information) between an organisation and auditor. If such an obligation is introduced, it should be limited to findings of an auditor during their financial audit engagement on annual financial year-end (**FYE**) reporting, with an express requirement that notification to the Reserve Bank is only made after consultation with the reporting entity and it is clear they have come to an impasse on the issue and the auditor believes the issue represents a breach of the organisation's IPSA obligations.

We would be pleased to discuss any questions you have on this submission, and we would welcome the opportunity to collaborate or consult further with the Reserve Bank as it considers the next steps.

Yours faithfully

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AIA New Zealand Limited

2.0 Governance, key officers and control functions

2.2 Fit and proper

Q 2.2.1 Should IPSA be amended so that a licensed insurer must obtain the Reserve Bank's approval prior to appointing a director or relevant officer? Would this create any difficulties for insurers?

AIA NZ is broadly supportive of the proposal for the appointment of directors and relevant officers (CEO, CFO and AA) to be subject to approval by the Reserve Bank. We recognise this as a logical extension of the current fit and proper certification requirements, in light of the concerns raised as to the effectiveness of solely relying upon such certifications and the desire of the Reserve Bank to take a more proactive and intensive approach to supervision.

Our support for this approach is subject to the Reserve Bank being clear and transparent as to the objective factors it would consider in granting (or denying) approval. This will ensure insurers can properly prepare when applying for approval and have reasonable certainty that applications for candidates that meet published criteria will be approved. The Reserve Bank should have no discretion to consider factors outside published criteria, limited to prudential matters only, and minimal discretion in assessing alignment with published criteria beyond a power to waive any criterion where it is satisfied a director or relevant officer is otherwise a fit and proper person to hold office.

Moreover, the implementation of the approval process must not be too onerous for would-be directors, and it must be timely. If the approval process poses undue difficulty in acting as or becoming a director, or if there is undue uncertainty as to the outcome of the approval process, the already limited pool of suitable candidates for such positions would be further reduced. These appointments are not made lightly by insurers and withholding or delaying approval should be a last resort. A delayed or unnecessarily burdensome approval process would have a chilling effect on the willingness of individuals to put themselves forward for consideration and may undermine the Reserve Bank's desire for robust and diverse boards, capable of effective governance.

We do not support an approval requirement extending to senior managers – see our response to Q 2.2.3 below.

Q 2.2.2 Should insurers have a duty to inform the Reserve Bank if they become aware of information that might reasonably cast doubt on a director or relevant officer's ongoing fit and proper status?

AIA NZ supports such a duty being imposed as it is a logical extension to the existing requirements under IPSA.

Q 2.2.3 Are there any reasons for, or against, extending fit and proper requirements to senior managers? Is 'managers that report directly to the chief executive officer' a useful way of delineating who should be captured as a 'senior manager'?

AIA NZ does not support the current proposed extension of fit and proper requirements to apply to senior managers.

We are concerned that this extension would place a significant burden on licensed insurers for relatively little benefit. While it is appropriate, from a prudential perspective, to require a fit and proper assessment for roles such as CEO, CFO, and AA, we do not believe this is appropriate for other senior roles even where that role reports directly to the CEO (for example, a senior role related to technology, product distribution or people and culture). In addition, the roles reporting to the CEO (outside of the CFO and AA) often differ between organisations, further complicating any extension of fit and proper requirements and making it difficult to establish clear and objective criteria.

We are also concerned with how the fit and proper requirement would be implemented in relation to senior managers who are not directly involved in prudential matters. We are concerned the factors the Reserve Bank would have to consider in granting approval for these senior managers would be subjective and give rise to undue complexity in the process. For example, it is clear that a CFO or AA should have adequate background and experience in prudential matters in order to be fit and proper. However, it is not clear what the assessment criteria would be for roles related to, for example, technology or customer interactions. The Reserve Bank should avoid making a subjective assessment when considering if a person is fit and proper to ensure that the Reserve Bank's judgement is not substituted for that of the insurer in what would otherwise be a purely commercial decision.

We consider that fit and proper requirements for senior managers could hinder progression and inclusion of people whose background and expertise may not match the perceived requirements of a senior role, particularly where those roles are not involved with prudential matters. New Zealand does not have a limitless pool of talent. The current tight labour market highlights the need to be flexible and innovative in developing and promoting the existing talent.

We do not agree that IPSA must align with the provisions in the Deposit Takers Bill (**DTB**) as pertains to these issues. In our view, insurers, unlike deposit takers, are less critically important to the day-to-day functioning of New Zealand's financial system. In this context, we consider that insurer's senior management positions are less critical than those of deposit takers, albeit recognising that insurers play an important role in the stability of the New Zealand economy as a whole. Accordingly, the provisions in IPSA do not necessarily need to mirror those in the DTB, particularly in the context where it could impede innovation and growth. The prudential operation of a Deposit Taker, and the skill sets required to appropriately govern such an entity, are fundamentally different to the considerations and broader skill sets required for the prudential operation of an insurer.

If senior managers are to be required to meet a fit and proper requirement, a pragmatic middle ground could be to require licensed insurers to certify that senior managers are fit and proper, without seeking Reserve Bank approval as is the case for directors and relevant officers under the proposed changes. This would strike a more appropriate balance with commercial considerations for what are non-governance roles, while still providing an additional layer of assurance as to the robustness of senior appointment processes. It also aligns with our understanding of the UK and Australian positions, where regulatory approval of appointees to roles below director and C-suite is not generally required.

2.3 Directors' accountabilities and duties

Q 2.3.1 Are current directors duties under IPSA appropriate? Or is there a case for imposing wider duties, to reflect the potential impact of insurer distress on policyholders and the wider economy?

AIA NZ believes that the current duties under IPSA and under common law are appropriate for directors and those overriding directors' duties are the best means of ensuring compliance with prudential regulation. They provide a robust set of duties that are well-understood and strike an appropriate balance. We consider that wider duties seem to extend beyond existing, established directors' duties under the Companies Act 1993 (Companies Act). At present a director can show that they have complied with their duties under the Companies Act by showing that they conducted due diligence in making a decision. What is proposed in the Options Paper would involve imposing a positive duty which each director must meet. We think this is inappropriate, considering that company decisions are made by the board not individual directors.

We do not believe a case has been made out for a wider set of directors' duties, to reflect the potential impact of insurer distress on policyholders and the wider economy, because we consider the existing director duties under IPSA are adequate to protect against insurer distress. We believe the existing directors' duties under IPSA that relate to the management of the statutory fund are correctly placed because that is the best means of minimising the risk of insurer distress. We believe the additional duties proposed would be of little additional benefit. It is unclear what benefit additional duties would give rise to, having regard to the existing duties and penalties in place under IPSA and duties imposed by company law.

Wider duties may have the effect of impacting the decision-making processes of the Board to avoid individual liability and could create an unhealthy tension in the board dynamic, undermining effective decision-making, challenge, and the benefits of diversity of thought in board compositions. If the Reserve Bank is concerned with the allocation of risk among directors for certain matters, we query whether a different regime is more appropriate for these matters. As an example, directors' certificates could be more appropriate for certain matters that set out the reasons for the approval, similar to the requirements for dividends under the Companies Act.

Q 2.3.2 If there is a case for broader duties, which approach is more appropriate: the narrower approach proposed in the DTA, the extensive approach adopted in the UK/Australia, or some other approach?

AIA NZ disagrees that there is a case for broader duties as set out in our response to question 2.3.1 above.

However, if the Reserve Bank decides that there is a case for broader duties, then we consider that the narrow approach proposed in the DTB would be far more appropriate than the extensive approach adopted in the UK and Australia. As noted in the Options paper, the more extensive approach adds complexity and would require significant resourcing. In addition, we understand that the recently announced Edinburgh reforms proposed for the equivalent UK regime include a consideration of narrowing the duties imposed on directors and senior managers, noting the more extensive approach has hindered growth in the financial sector. Adopting an extensive approach in New Zealand would, in our view, result in a number of directors reconsidering their ongoing involvement in the sector due to their increased personal liability and involvement. This would further reduce the already limited talent pool available in New Zealand, and risk undermining one of the Reserve Banks objectives of improving insurer governance and board diversity.

Q 2.3.3 Are there any other considerations you would like to draw to our attention when thinking about director's duties?

No.

Q 2.3.4 Other than the duty to life policyholders established under the statutory fund regime, are there any other areas under the IPSA regime where directors or insurers should be obliged to consider policyholder interests or give priority to policyholder interests ahead of those of shareholders or members?

AIA NZ considers the current requirements relating to policyholder interests in relation to the statutory fund to be effective. Our interpretation of IPSA has always been to consider policyholder interests in a way that considers the terms and conditions on which policies were issued; the information conveyed to the policyholder at the point of sale or subsequently; the experience of the company in relation to the elements relevant to the policy; the history and past practice of the company; and general practice in the industry. We do not believe that adding a requirement to consider policyholder interests, or to give priority to policyholder interests, adds any practical value over and above the existing requirements under IPSA.

Paragraph 2.3.18 of the RBNZ Options Paper notes that no other jurisdiction imposes an explicit, direct, general duty to policyholders on directors. We do not believe the New Zealand market is so different to the rest of the world that we should consider adding such an express consideration, especially when the existing protections provided by IPSA are considered and applied correctly.

We are concerned that, should IPSA impose additional obligations in relation to considering policyholder interests, there may be scope creep between prudential regulation under IPSA and the duties that will be imposed upon insurers by the Financial Markets Authority (**FMA**) under the Financial Markets (Conduct of Financial Institutions) Amendment Act 2022 (**CoFI**). In our view, the concerns raised in the Options Paper are matters for a conduct regulator and more appropriate for the FMA to consider under CoFI than for the Reserve Bank to consider under the review of IPSA. Amendments to IPSA should be drafted in a way that clearly

delineates prudential matters governed by IPSA and conduct matters governed by COFI to avoid any duplication.

2.4 The Appointed Actuary

Q2.4.1 Would it be helpful for standards to:

(a) set out clearer expectations for the appointed actuary's role;

AIA NZ supports standards setting out clearer expectations for the AA role. This would significantly help regulated entities establish clear accountability and governance structures to meet the Reserve Bank's expectations.

(b) set out the appointed actuary's place in the insurer's governance structures; and/or

We do not believe standards should set out the AA's place in insurer governance structures. Provided the expectations of the AA role are clearly articulated in the standards then we believe that insurers should be free to determine where the AA appropriately fits within their particular governance arrangements. Insurers have many different governance models, so this is not a situation where one size fits all. We believe the Reserve Bank should simply empower insurers to make properly informed decisions about the most appropriate position for their AA within their governance framework to avoid artificial structures and reporting lines that provide no real additional benefit to insurers or policyholders.

(c) require insurers to explicitly consider resourcing needs for the appointed actuary role?

We do not believe the standards need to require insurers to explicitly consider resourcing needs for the AA role. As explained in our response to question 2.4.1(b) above, we believe that if the expectations of the AA role are clearly articulated in the new standards, insurers will be able to determine the appropriate resourcing requirements for the AA themselves. With the AA having clear duties under IPSA, the requirement to ensure the AA is appropriately resourced is already sufficiently clear without requiring further prescription. Insurers in New Zealand range in size and structure and insurers should be able to make decisions to suit accordingly.

Q 2.4.2 Would it be valuable to require insurers to have an actuarial advice framework in place under IPSA?

We note that one of the Reserve Bank's actions arising from its thematic review of AAs was to direct insurers to implement an actuarial advice framework. We do not see why this requirement also needs to be included in IPSA. Instead, we consider that any requirement for an actuarial advice framework and guidance for the required contents of the actuarial advice framework would be best addressed in the proposed new standards prescribing the role of the AA.

Q2.4.3 To what extent do you think that the Reserve Bank's power to remove an appointed actuary based on fit and proper requirements provides adequate incentives and sanctioning power, in light of the role that appointed actuaries play in the regulatory framework?

AIA NZ considers that the Reserve Bank's power to remove an AA based on fit and proper requirements provides adequate incentives and sanctioning power, especially if combined with clear expectations of the AA in new standards and in combination with the New Zealand Society of Actuaries' disciplinary procedures. Membership of the NZSA imposes CPD, code of conduct and ethical obligations on all member AAs. While we understand the Reserve Bank's concerns expressed in the Options Paper about the 'negative assurance' nature of the current requirements, we believe that incorporating reference to the actuarial advice standard in the fit and proper standard is an adequate measure to ensure there is appropriate accountability. However, further information is needed with regards to the proposed standards and should be subject to further consultation with the industry.

Q2.4.4 Should the Reserve Bank impose a statutory duty on the appointed actuary to use due diligence to carry out their assigned role, enforceable with a civil pecuniary penalty?

AIA NZ does not support the imposition of a statutory duty on the AA to use due diligence, which is enforceable with a civil pecuniary penalty. The work of an AA contains a lot of uncertainty and complexity and issues may only arise years after an AA leaves the role, making enforcement practically difficult. Additionally, the NZSA has recently updated its Code of Conduct and disciplinary procedures. Considering the above, we do not believe the imposition of a statutory duty on the AA to use due diligence, enforceable with a civil pecuniary penalty is appropriate or necessary.

There is a limited pool of experienced, suitably qualified actuaries available in the New Zealand market. We are concerned that the prospect of increased personal liability may have a chilling effect on the willingness of senior practitioners, in particular, to continue in the role and on insurers' ability to attract new talent from overseas.

Q2.4.5 Should appointed actuaries have a duty to identify and present the interests of policyholders? If so, should that be a general duty or only one that applies in specific contexts (such as preparing the financial condition report?)

AIA NZ does not support a specific duty being imposed on AAs to identify and present the interests of policyholders because this would be a very broad requirement and difficult to quantify. We consider this requirement is already inherent in existing IPSA provisions. In our view this would place an unreasonable burden on the AA, for questionable benefit.

The NZSA professional standard for life insurers (PS21) sets out items that the AA must address in the financial condition report. A number of these items are relevant to policyholder interests such as the use of discretions and the management of participating business.

In our view, the NZSA professional standards and IPSA already requires the AA to consider policyholder interests, where appropriate, in performing their duties.

2.5 The Auditor

Q2.5.1 Should IPSA include a provision requiring auditors to notify the Reserve Bank if they become aware that an insurer is failing to comply with its accounting and financial reporting obligations?

We do not support an additional obligation being placed on auditors to notify the Reserve Bank should they become aware during their financial audit engagement that an insurer is failing to comply with its accounting and financial reporting obligations. We query what additional benefit the proposed requirement would add in practice, given that auditors are already required to report material concerns in their audit report which is sent to the Reserve Bank.

We have concerns about the threshold at which this obligation would come into effect. During a robust audit process the role of the auditor is to consider information presented and to challenge the organisation. As part of this process, the auditor and organisation exchange questions and clarification information. There are typically varying views on issues relating to technical, actuarial, and accounting concepts. These discussions and debates typically continue right up until the reports are finalised.

If the proposed requirement is introduced, then it should only apply towards the end of the audit engagement where the auditor and organisation have reached an impasse on an issue and the auditor believes the issue represents a breach of the organisation's IPSA obligations. Notification early in the engagement process may be uninformed and could prevent direct resolution of issues that may otherwise be able to be explained by or worked through with the organisation.

Similarly, if the proposed requirement is introduced, it should be accompanied by a requirement for the auditor to first raise its concerns with the organisation directly, allowing the organisation a chance to respond and address the auditor's concerns, with reporting to the Reserve Bank effectively a last resort if the auditor is not satisfied with the insurer's response.

Finally, if this requirement is introduced, we strongly believe it should be limited to findings of an auditor during their financial audit engagement on FYE annual reporting, with an express clarification that auditors are not required to consider an insurer's potential breaches of its IPSA obligations outside of this period. We believe the obligation could be too onerous, should there be an expectation of ongoing engagement with the auditor throughout the year. It could also constrain engagements between auditor and insurer if there is a perception that misinterpreted information could be sent through to the Reserve Bank without robust discussion or analysis as to whether the issue constitutes a breach

2.6 Banning orders

Q 2.6.1 Should a serious and persistent breach of statutory due diligence duties (if they were introduced) be grounds on which a court might issue an industry-wide banning order?

AIA NZ agrees that a serious and persistent breach of statutory due diligence duties, if introduced, would be an appropriate extension to the existing grounds on which a court might issue an industry-wide banning order on a director/former director.

2.7 A governance standard

Q 2.7.1 Do you agree that it would be appropriate for IPSA to empower a governance standard?

We support the adoption of a governance standard under IPSA, so long as it is flexible enough to accommodate different sizes and structures of insurers and is sufficiently clear and example laden.

Q 2.7.2 Can you suggest any principles that should guide the drafting of empowering provisions or the design of governance standards?

AIA NZ supports the Reserve Bank taking a principles-based approach when drafting a governance standard. This is critical in ensuring the standard can apply to the wide range of different sizes and structures of insurers. Where possible, the standards should include examples of how the requirements could be met for small and large insurers along with examples for publicly listed insurers and those part of wider international groups. It is critical that the standard not be unduly prescriptive.

2.8 Risk management

Q 2.8.1 Do you think it is appropriate for IPSA to empower a risk management standard? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

AIA NZ supports a risk management standard under IPSA. A risk management standard would clarify the Reserve Bank's requirements for minimum standards of risk management and ensure a consistent approach across the industry.

If the Reserve Bank does decide to implement a risk management standard, we believe the Reserve Bank should only require significant changes to existing risk management programmes to be submitted for approval in line with IPSA s73(4). Incremental changes that do not affect the substance of the risk management programme, such as minor typographical changes or elaboration, should not need to go through a review and would unnecessarily burden the Reserve Bank, potentially causing resources to be diverted from more effective monitoring activity.

Any risk management standard that is developed needs to be sufficiently flexible to support risk management programmes being right-sized, tailored for each insurer and workable for the different risk management methodologies used by insurers. It is critical that the Reserve Bank's expectations are very clearly articulated in any such standard to provide insurers with certainty as to what is required, given the greater regulatory significance of a standard as opposed to guidelines.

Q 2.8.2 Do you think it is appropriate for IPSA to empower a standard requiring an ICAAP/ORSA process? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

We are not convinced as to the need or desirability of imposing a new ICAAP/ORSA process. We would support this requirement if the standard were not overly prescriptive. The extent of the additional benefit such extra requirements will bring is also unclear, given IPSA's existing requirements.

We agree with the observations made in the Options Paper regarding the need for proportionality in any standard adopted, given the variety in size, form, and business of licensed insurers. If the standard is overly prescriptive and/or inflexible, it is likely to be impractical for many insurers to implement. Many insurers in New Zealand have overseas based parent companies that will likely already have requirements for their local businesses to follow. Any standard should recognise this and allow insurers to apply a similar process to that utilised by their parent company, with minimal adaptation necessary to accommodate any local requirements of the standard.

We are not convinced that the benefit of an ICAAP/ORSA process over and above existing IPSA requirements outweighs the effort of implementing such a process. Adapting to accommodate such processes could be an extensive exercise. The costs of such an exercise should be clearly weighed against the benefits to New Zealanders before it is undertaken, and the Reserve Bank should clearly articulate the value it expects to achieve from such a change. This is especially pertinent because many of the ICAAP requirements are already being incorporated under the ISS review and will likely form part of IPSA review, based on previous consultations. Any duplication of requirements under IPSA should be avoided.

We agree that further policy work is required on this topic and would welcome the opportunity to submit on this topic further.

3.0 Supervisory processes

3.1 Licensing

Q 3.1.1 Do you agree that it is appropriate for IPSA to contain a requirement for RBNZ to consult with the FMA, before the RBNZ issues or cancels an insurer licence issued under IPSA?

AIA NZ supports a requirement that the Reserve Bank consults with the FMA before issuing or cancelling a licence under IPSA.

The reciprocal requirement placed on the FMA under CoFI means that imposing the requirement under IPSA would provide consistency of approach across the two regimes. However, we are concerned that the remits between the Reserve Bank and FMA may become blurred as a result and that considerations out of scope of IPSA may be factored into the Reserve Bank's decisions on prudential matters. Any legislative requirement to consult should be limited to and remain within the scope of the factors the Reserve Bank needs to consider under IPSA. We believe any discussions or actions arising out of such consultation should be disclosed to the

organisation for the sake of transparency, and to ensure the organisation has a chance to mitigate any concerns via the appropriate channels.

3.2 Approvals for restructuring

Q3.2.1 Do you agree with the proposal to consolidate the approval process for change of control, change of corporate form, transfers and amalgamations into a single test? Why?

We agree with the proposal to adopt a consolidated approval process for change of control, change of corporate form, transfers and amalgamations, and a process that has a focus on substance over form, provided the Reserve Bank applies a proportional approach when it considers applications.

A consolidated approach would lessen the administrative burden and disproportionate amount of work required for low-risk change activities that do not impact on governance and operations.

Q3.2.2 Do the proposed permissible considerations cover an appropriate range of considerations or are there other matters the Reserve Bank should be considering?

We agree that the proposed permissible considerations cover an appropriate range of considerations.

Q3.2.3 Please identify any issues that you believe should be governed by a 'red line' prohibition – i.e. transactions that the Reserve Bank must not approve.

We do not support the governing of any issues by a "red line" prohibition. We believe the Reserve Bank should start all application reviews with a rebuttable presumption of approval, and only deny applications for good reasons on a principled basis, without any black letter constraints.

The Reserve Bank should always bear in mind the commercial realities of operating as an insurer and the need to be able to restructure and conduct commercial transactions with as little interference from regulators as practicable, except where necessary to ensure that policyholder interests are adequately protected, and that the organisation continues to meet its obligations under IPSA.

Q3.2.4 Please identify any constraints that you think should be placed on the Reserve Bank's ability to attach conditions to its approval of a restructuring.

AIA NZ believes the Reserve Bank should be required to give reasons for declining an application for approval of a restructuring, or reasons for imposing any conditions thereupon, and those reasons should identify the prudential concerns the Reserve Bank has with the proposed restructuring. Any decision to impose conditions or decline an application should be provisional at first instance when communicated to the applicant (along with the reasons for that decision), with opportunity for the applicant to respond or provide additional information prior to a final decision by the Reserve Bank.

Q3.2.5 What do you consider to be the appropriate mechanism for setting out details of the approval process: primary legislation, secondary legislation (i.e. regulations), guidelines, or other?

AIA NZ believes that guidelines are the most appropriate method for outlining the approval process, as they are the most flexible, allowing the Reserve Bank to modify the approval process more easily as it considers applications and its thinking evolves, with greater flexibility to respond to proposed restructurings involving novel issues.

Q 3.2.6 How should the Reserve Bank balance market freedom with policyholder security in assessing restructuring transactions? Do you have any comments on wording that you think would capture this balance appropriately?

AIA NZ is of the view that wording that captures the balance of market freedom with policyholder security in assessing restructuring transactions should empower the Reserve Bank, within its discretion, to consider policyholder interests and policyholder security in the context of a particular application, but this should not be a mandatory requirement.

Q 3.2.7 Should the requirements to consider policyholder interests be different for statutory funds than for other restructuring transactions for which Reserve Bank approval is required?

AIA NZ does not have any specific feedback on this question.

Q3.2.8 Would it be helpful for Reserve Bank guidance on approval processes to say more about how we interpret the requirement to consider policyholder interests?

We believe guidance from the Reserve Bank on the approval process and its interpretation of the requirement to consider policyholder interests would be helpful.

Q 3.2.9 Should approval processes include a requirement for us to consult with the FMA as part of our approval decision-making?

We do not agree that there should be a requirement for the Reserve Bank to consult with the FMA as part of its restructuring approval decision-making process. We do not believe that adding such an additional administrative step is necessary or desirable.

CoFI does not include a requirement for the FMA to consult with the Reserve Bank when there is a change requested to a CoFI licence, so imposing such a requirement in IPSA would be inconsistent. In addition, under CoFI, financial institutions only have obligations to notify the FMA of a material change prior to implementation. There can, at times, be considerable time delays between gaining the necessary Reserve Bank approvals and the implementation of the change. Under CoFI, this could mean that the FMA is only required to be notified some months later once the implementation plan is finalised and about to be implemented. It would be inconsistent and inappropriate to require the Reserve Bank to consult with the FMA on a restructuring prior to the organisation raising the matter with the FMA itself.

Given that the Reserve Bank approval decisions primarily relate to the structure of the insurer, which more directly impacts the organisation's ability to meet its prudential regulations, it is appropriate for the Reserve Bank approval process to be completed first before the FMA considers any conduct implications.

Q3.2.10 Do you agree that section 44 should be extended to apply to the acquisition of insurance business by a licensed insurer from a non-licensed overseas insurer?

We agree with the proposal to extend section 44 to apply to the acquisition of insurance business by a licensed insurer from a non-licensed overseas insurer. We believe it is a sensible and logical extension of the existing regime.

Q3.2.11 What do you think the appropriate threshold should be for a change of control to be notified to the Reserve Bank? Why?

AIA NZ believes that an appropriate threshold for change of control to be notified to the Reserve Bank would be 50% or more of voting rights. It is unclear how the insurance relationship is sufficiently different to warrant imposing a different threshold to that applied in the Deposit Takers Bill.

Should the Reserve Bank consider implementing a lower threshold than 50% of voting rights, we believe this would negatively impact the attractiveness of New Zealand Insurers for overseas investment. Many insurers rely on overseas investment to fund their growth and expansion, and a low threshold may make New Zealand insurers less attractive than those in other countries.

If the Reserve Bank does adopt a lower threshold than 50%, then the Reserve Bank should develop an efficient process and issue clearly articulated guidance around the approval process and include indicative levels at which greater scrutiny is applied. In this instance we would suggest that it would be more appropriate if the RBNZ includes in the process a proportionality approach that tailors approval requirements for changes of control so that they are proportional to the risk.

Q3.2.12 Please comment on the appropriateness of: (a) replacing the fixed 20 working day timeframe for approvals with a 'within a reasonable time' timeframe, or (b) extending that timeframe to 45 working days. Please provide any other comments or options you consider appropriate.

We are cautious of imposing a blanket "reasonable time" timeframe for approvals and on extending the timeframe to 45 working days.

If either of these approaches is adopted then the Reserve Bank should include indications in its guidance on approvals for the length of time it expects to take for different types of applications. For example, the Reserve Bank could indicate that the timeframe for minor restructuring approvals is within 20 working days of it receiving an application, but complex transactions or complete sales of an insurers business may require the full 45 working days.

4 Data and disclosure

4.2 A data and disclosure standard

Q4.2.1 Should IPSA empower a data and disclosure standard that could set out disclosure requirements, including data that should be made available to the public?

We support a data and disclosure standard under IPSA, but that this should be subject to further consultation with the industry.

Any proposals relating to information that needs to be made available to the public must be consulted on with the industry and be limited to information that is useful for customers when making decisions. In other words, any new standard should not support a straight information-gathering process, in the absence of a clearly articulated purpose for the information gathering. The Reserve Bank must be mindful of over-disclosure and placing an undue burden on insurers to collate and supply data, noting that the majority of disclosures prepared are not read or relied upon by customers when compared with the significant amount of work that is required to prepare them.

AMERICAN INCOME LIFE
insurance company

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20 February 2023

Reserve Bank of New Zealand
Financial System Policy and Analysis – Financial Policy
PO Box 2498
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By email: ***ipsareview@rbnz.govt.nz***

American Income Life Insurance Company (*AIL*) welcomes the opportunity to make submissions on Options Paper 4: Governance Supervisory Processes and Disclosure, as part of the Reserve Bank's larger review of the Insurance (Prudential Supervision) Act 2010.

AIL is a life insurer selling mainly to communities, including lower income households and migrant workers, which have traditionally not been well-served by other insurers in New Zealand.

AIL is one of the few life insurers that specifically services this market segment in New Zealand. It focuses mainly in selling level premium term life contracts, which remain affordable to policyholders as they age, avoiding the steep premium increases of yearly renewable plans typically offered by other insurers.

AIL operates a branch in New Zealand, with assets held in a dedicated Custodial Fund that ensures protection of its New Zealand policyholders. Its home office is registered in the State of Indiana, United States of America.

AIL responds to the questions raised in the consultation paper in the **Schedule** attached to this letter.

General Comments
The Options Paper 4 acknowledges the increasing emphasis placed on regulatory discipline. AIL recommends that, before continuing that trend, Reserve Bank considers whether it is suitable to extend the existing regulatory disciplines, as they are the most cost-inefficient, inaccurate and unreliable of the three pillars to guard against industry risks.

AIL urges the Reserve Bank, when considering its options, to:

- evaluate and remove any duplication of the proposed additional requirements with the matrix of existing regulatory obligations and the strong influences arising from market disciplines and the self-disciplines;
- consider the cost, the proportionality (including the distraction from other more important customer and risk based matters), and usefulness (especially in the context of data) of the proposed additional requirements; and
- consider whether the risk and governance procedures and controls already demonstrated in the Reserve Bank/FMA conduct life insurer reviews, and the proposed fair conduct programmes and licensing standard conditions arsing from the proposed CoFI reforms, already cover the issues to be addressed by those options, and if so not introduce duplicative requirements.

As an overseas insurer carrying on insurance business in New Zealand, AIL requests that, when considering the options, the Reserve Bank makes suitable allowance for the considerable protections available under the regulatory regime under which AIL operates in the State of Indiana, United States of America. The New Zealand insurance market benefits from the availability of cover provided from offshore by foreign insurers. This cover could be severely discouraged if New Zealand's prudential supervision requirements significantly exceed the protections imposed in other well-regulated jurisdictions or if New Zealand's prudential supervision regime is not harmonised with those foreign requirements so that unnecessary and excessive duplication is imposed.

Fit and proper assessment of all insurers' directors and senior managers is proposed under the CoFI standard licensing conditions. In anticipation of the introduction of CoFI, any duplication between the IPSA fit and proper requirements and those proposed by the CoFI licensing conditions should be harmonised, so only one form of certificate is required for the two regulators, and insurers need deal with only one regulator in relation to the appointment of their directors and senior managers. Ideally all fit and proper assessments of directors and key managers should be contained in a single set of requirements and the actions of the two regulators is co-ordinated.

AIL does not favour obligations being placed personally on directors and key officers. Imposing personal liability can often discourage talent to take on key roles, and lead to excessive caution within a business, which causes unnecessary back-covering costs and impedes innovation and suitable risk taking.

Respectfully yours,
AMERICAN INCOME LIFE INSURANCE COMPANY

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SCHEDULE

AIL's Comments and Submissions

Question	Response
2.2: Fit and proper	
2.2.1: Should IPSA be amended so that a licensed insurer must obtain the Reserve Bank's approval prior to appointing a director or relevant officer? Would this create any difficulties for insurers?	No, Reserve Bank pre-approval of directors and relevant officers would cause insurers to undertake costly provision and presentation of a range of information supporting each appointment. This process would duplicate the insurer's internal investigations of the chosen candidate, and delay appointments. The current 'fit and proper' assurance process is a more efficient, with substantially the same degree of protection. It is internationally recognised as a suitable and proportionate measure and should continue to be adopted in New Zealand. If Reserve Bank's pre-approval is to be required of directors and relevant officers, overseas insurers in suitable jurisdictions, such as Indiana, USA (where AIL is incorporated) should be exempt, in the same way as section 38 exempts 'fit and proper' certificates for directors of foreign insurers in recognition of their home country regimes. AIL: • thoroughly vets all candidates for director; • ensures that all of AIL's directors are fit and proper persons to hold the position under Indiana law; • is subject to the laws of Indiana, USA, which provide the ability of the Indiana regulator to remove directors that do not meet the fit and proper standard; and • is currently exempted under section 38 of IPSA to supply the Reserve Bank with a fit and proper certificate upon the appointment of a new director, but not a new relevant officer.

2.2.2: Should insurers have a duty to inform the Reserve Bank if they become aware of information that might reasonably cast doubt on a director or relevant officer's ongoing fit and proper status?	No, the introduction of such a duty as it is far too broad and ambiguous. A duty to notify the Reserve Bank upon the discovery of information that "might reasonably cast doubt" is unduly burdensome and will lead to over-reporting. Over-reporting in such circumstances may lead to legal risk on the insurer, and reputational damage for the director or relevant officer if the information is later determined to be untrue. A director or relevant officer is either a fit and proper person under IPSA, or they are not. If an insurer becomes aware of information that casts doubt on the fit and proper status of a director or relevant officer, the proper course is for this information to be verified, and then considered against the totality of the information known about the director or relevant officer (as set out in the fit and proper standards). If the insurer subsequently determines that the director or relevant officer no longer meets the fit and proper requirements, then they should be removed and notified to the Reserve Bank. It would be inappropriate for the Reserve Bank to be notified if the director or relevant officer is still considered a fit and proper person to hold their position.
2.2.3: Are there any reasons for, or against, extending fit and proper requirements to senior managers? Is 'managers that report directly to the chief executive officer' a useful way of delineating who should be captured as a 'senior manager'?	The 'fit and proper' requirements should not be extended to "senior managers", and in any case the definition of "managers that report directly to the chief executive officer" is too broad. If the 'fit and proper' requirements are extended, the new class should be limited solely to individuals (in addition to relevant officers) who have the overall responsibility over the insurer's risk management, or actuarial and internal audit functions. Further, for overseas insurers, the fit and proper requirements should, of course, extend only to those individuals who have responsibility over the insurer's New Zealand business. For completeness, AIL notes that the International Association of Insurance Supervisors' *Insurance Core Principles* referenced in the consultation paper uses the term "senior management" and not "senior manager". AIL submits that if the fit and proper requirements are extended, the term "senior management" should be used and not "senior manager", as the latter is already used in the Financial Markets Conduct Act and the Financial Service Providers (Registration and Dispute Resolution) Act and carries a different meaning.

2.3: Directors' accountabilities and duties	
2.3.1: Are current directors duties under IPSA appropriate? Or is there a case for imposing wider duties, to reflect the potential impact of insurer distress on policyholders and the wider economy?	The current IPSA specific duties imposed on directors are more than sufficient. It is unnecessary to expand these duties. For example: • IPSA already contains provisions deeming the directors liable if an insurer is convicted of an offence under IPSA; • if there is a conflict between policyholders and shareholders in respect of the statutory fund, directors must give priority to the policyholders; • directors may be personally liable for losses caused to the statutory fund. In fact, the current director liabilities should be rewritten to ensure that they apply only when directors are culpable (for example, currently directors can be liable for breaches which occur under their authority, even when the director is unaware of, or did not authorise, the particular breach). AIL submits that the current IPSA specific duties, combined with obligations imposed under other legislation and common law, more than sufficiently protect policyholders and the wider economy from the impacts of insurer distress.
2.3.2: If there is a case for broader duties, which approach is more appropriate: the narrower approach proposed in the DTA, the extensive approach adopted in the UK/Australia, or some other approach?	Neither, it is not appropriate to expand or broaden the existing director duties under IPSA. But if the Reserve Bank was so minded, the narrower approach would be more suitable.
2.3.3: Are there any other considerations you would like to draw to our attention when thinking about director's duties?	No.
2.3.4: Other than the duty to life policyholders established under the statutory fund regime, are there any other areas under the IPSA regime where directors or insurers should be obliged to consider policyholder interests or give priority to policyholder interests ahead of those of shareholders or members?	No. The current position under IPSA, that directors prioritise policyholder interests ahead of shareholder interest in respect of the statutory fund is sufficient. Any further expansion of this duty should be carefully considered and further consultation would be required to fully identify any unintended consequences. For example, it is not always the case that prioritising the short term interests of policyholders over shareholders would be in the long term interest of policyholders.

2.4 The appointed actuary	
2.4.1: Would it be helpful for standards to: (a) set out clearer expectations for the appointed actuary's role; (b) set out the appointed actuary's place in the insurer's governance structures; and/or (c) require insurers to explicitly consider resourcing needs for the appointed actuary role?	AIL does not require clearer expectations from the Reserve Bank with regards to the appointed actuary's role. Because every insurer is different, we feel the Reserve Bank's expectations need to provide sufficient flexibility to enable the insurer to engage with their appointed actuary in the most efficient way possible.
2.4.2: Would it be valuable to require insurers to have an actuarial advice framework in place under IPSA?	No, AIL is capable of imposing its own standards for its actuary's advice, and does not require an actuarial advice framework. Requiring an actuarial advice framework would be an unnecessary cost. If an actuarial advice framework is adopted, it should allow sufficient flexibility for insurers to tailor the actuarial advice framework to best suit its business.
2.4.3: To what extent do you think that the Reserve Bank's power to remove an appointed actuary based on fit and proper requirements provides adequate incentives and sanctioning power, in light of the role that appointed actuaries play in the regulatory framework?	The Reserve Bank's current powers to remove an appointed actuary based on fit and proper requirements provides adequate incentives and sanctioning power in holding appointed actuaries to account. Given the size of the New Zealand insurance market, and therefore the demand for actuaries, AIL believes an actuary's removal for fit and proper requirements would be a significant deterrent to inappropriate behaviour. Additional compliance obligations may lead to an increase in the insurer's costs which may be passed to policyholders.
2.4.4: Should the Reserve Bank impose a statutory duty on the appointed actuary to use due diligence to carry out their assigned role, enforceable with a civil pecuniary penalty?	No, the imposition of a statutory duty on the appointed actuary to use due diligence to carry out their assigned role is unnecessary. As mentioned above, there are already adequate protections to ensure actuaries perform their obligations sufficiently. Actuaries have significant incentives to carry out their duties in accordance with IPSA. Imposing additional compliance burdens would lead to increase costs. Further, appointed actuaries have contractual duties to their insurer and are also regulated by the New Zealand Society of Actuaries (including the disciplinary procedures), so additional requirements would duplicate the existing protections.

2.4.5: Should appointed actuaries have a duty to identify and present the interests of policyholders? If so, should that be a general duty or only one that applies in specific contexts (such as preparing the financial condition report?)	No, additional duties to policyholders would be unnecessary. The requirements, functions and responsibilities of actuaries already provide sufficient protections for policyholders. Appointed actuaries have existing standards which provide sufficient protections. If contrary to the above such a duty is to be imposed, the introduction of any specific duty should first be subject to industry consultation to ensure that there are no unintended consequences.
2.5 The auditor	

2.5.1: Should IPSA include a provision requiring auditors to notify the Reserve Bank if they become aware that an insurer is failing to comply with its accounting and financial reporting obligations?	No, such a duty on auditors is unnecessary because auditors are, under section 127 of IPSA, already under a duty to disclose to the Reserve Bank information about an insurer if (in the opinion of the auditor):
	• the insurer:
	  ○ 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
	  ○ is in serious financial difficulties; or
	  ○ is, or has been, operating fraudulently or recklessly; and
	• the disclosure of that information is likely to assist, or be relevant to, the Reserve Bank in exercising its powers under IPSA.
	
	If a further duty on auditors is to be introduced, careful consideration and further consultation should first be made on:
	• what the Reserve Bank considers to be "failing to comply with ... accounting and financial reporting obligations", and whether section 127 of IPSA adequately covers this duty already; and
	• requirements on auditors to first seek clarification from, and engage, the insurer on any concerns prior to making any Reserve Bank notification.

2.6 Banning orders	
2.6.1: Should a serious and persistent breach of statutory due diligence duties (if they were introduced) be grounds on which a court might issue an industry-wide banning order?	AIL does not take a position on this.

2.7 A governance standard	
2.7.1: Do you agree that it would be appropriate for IPSA to empower a governance standard?	No, insurers will come under the new COFI regime (of which good governance is a key focus). It would therefore be duplicative to impose governance standards under IPSA. If a governance standard was to be imposed under IPSA, the Reserve Bank and FMA should align their expectations in a single standard. Any governance standard needs to recognise that good governance is specific to each insurer's business and its culture. It would be inappropriate to adopt a rigid, "one-size fits all" approach.
2.7.2: Can you suggest any principles that should guide the drafting of empowering provisions or the design of governance standards?	AIL requests that any proposed governance standard be subject to industry consultation to ensure that the right balance is struck, and carefully consider all unintended consequences.
2.8 Risk management	
2.8.1: Do you think it is appropriate for IPSA to empower a risk management standard? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?	AIL is, in principle, supportive of a risk management standard being introduced. That said, we believe that Section 73 of the Act is fairly prescriptive, while also giving individual boards flexibility to set the tone of their own risk management programmes. The Reserve Bank states in the consultation paper, further public policy work and industry consultation should be undertaken. AIL would welcome the opportunity to comment on any proposed risk management standard the Reserve Bank published in the future.
2.8.2: Do you think it is appropriate for IPSA to empower a standard requiring an ICAAP/ORSA process? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?	AIL does not take a position on this other than to state that AIL's US business is subject to the US ORSA process, and it would be helpful if any processes adopted in New Zealand were to have similar features as those found in the US ORSA process. We would note that there are indications that the next Solvency Standard may incorporate ICAAP/ORSA concepts.

3.1 Licensing	
3.1.1: Do you agree that it is appropriate for IPSA to contain a requirement for Reserve Bank to consult with the FMA, before the Reserve Bank issues or cancels an insurer licence issued under IPSA?	AIL is, in principle, supportive of an amendment to IPSA requiring the Reserve Bank to consult with the FMA prior to the issuing or cancellation of an insurer licence.
3.2 Approvals for restructuring	
3.2.1: Do you agree with the proposal to consolidate the approval process for change of control, change of corporate form, transfers and amalgamations into a single test? Why?	AIL, in principle, would support consolidating the approval processes for change of control, change of corporate form, transfers and amalgamations into a single "restructuring" approval process. However, AIL submits that it would be appropriate to do so only if the new approval process: • can operate flexibly and efficiently to scale the approval process to the appropriate standard, and deal with straightforward restructurings efficiently and cost-effectively; and • is sufficiently transparent, and supported by clear guidelines on the various considerations the Reserve Bank expects to consider as part of the approval process (see our submissions at 3.2.2 below). It should also be recognised that in cases of change of control, there are often fewer implications for the New Zealand insurer business and its policyholders than if two insurer businesses are being merged (through a business transfer). For example, in a change of control, there would not be two classes of policyholders whose interests and relativities need to be considered separately. Also 'upstream' changes of control can often not have significant issues for a New Zealand insurer at the bottom of a chain. Accordingly, the applications for consent for changes of control ordinarily should not require the same degree of information, including prospective actuarial and accounting reports, as insurance business acquisition applications. The process should be sufficiently flexible to allow for the information needs for different types of arrangements, and to ensure the approval process is suitable, efficient and timely.

3.2.2: Do the proposed permissible considerations cover an appropriate range of considerations or are there other matters the Reserve Bank should be considering?	AIL supports the proposed permissible considerations set out at paragraph 3.2.16 of the options paper. With respect to the Reserve Bank's proposal to supplement the proposed permissible considerations with updated guidelines, AIL would welcome: • the guidelines clarifying the various matters (even at a high level) the "matters the Reserve Bank considers relevant" as part of the restructuring process; and • the opportunity to be consulted on those guidelines.
3.2.3: Please identify any issues that you believe should be governed by a 'red line' prohibition – i.e. transactions that the Reserve Bank must not approve.	The Reserve Bank should be able to determine whether to grant its approval as it thinks fit, subject to administrative law requirements. It could be unnecessarily restrictive to impose 'red-line' prohibitions.
3.2.4: Please identify any constraints that you think should be placed on the Reserve Bank's ability to attach conditions to its approval of a restructuring.	The current position, which requires the Reserve Bank to act reasonably in exercising its powers, is sufficient.
3.2.5: What do you consider to be the appropriate mechanism for setting out details of the approval process: primary legislation, secondary legislation (i.e. regulations), guidelines, or other?	AIL considers that the current position, i.e. primary legislation supplemented by Reserve Bank guidelines and standards, remains the most effective and efficient mechanisms in dealing with the approval process.
3.2.6: How should the Reserve Bank balance market freedom with policyholder security in assessing restructuring transactions? Do you have any comments on wording that you think would capture this balance appropriately?	If the restructuring process is consolidated, AIL submits that a general permissive approach supplemented by a power to refuse or impose conditions to address material detriment to policyholders (relative to the most likely counter-factual) would strike the correct balance between market freedom and policyholder security. This combination would: • allow standard and uncontroversial restructuring transactions to be approved in a timely manner (whilst still giving the Reserve Bank discretion to consider policyholder interests in exceptional materially prejudicial circumstances); and • allow the Reserve Bank to focus its attention and resources in scrutinising restructuring transactions involving high risk to policyholders (e.g., restructuring transactions involving insurer distress).

3.2.7: Should the requirements to consider policyholder interests be different for statutory funds than for other restructuring transactions for which Reserve Bank approval is required?	If Reserve Bank's approach is to allow market freedom, subject only to a material detriment to policyholders exception, the materiality threshold should take account of the differing relativity of interests between life insurance policyholders and fire and general insurance policyholders, so that there would not need to be a distinction between insurers with a statutory fund and those without in this context.
3.2.8: Would it be helpful for Reserve Bank guidance on approval processes to say more about how we interpret the requirement to consider policyholder interests?	AIL would welcome Reserve Bank guidance in this area, and would also welcome further opportunities to be consulted on any proposed guidance before they are published.
3.2.9: Should approval processes include a requirement for us to consult with the FMA as part of our approval decision-making?	No, including an additional formal consultation requirement would add further delay to an approval process. In appropriate circumstances, the two regulators may consult as part of the decision-making process, but it seems unnecessary to require that this occurs.
3.2.10: Do you agree that section 44 should be extended to apply to the acquisition of insurance business by a licensed insurer from a non-licensed overseas insurer?	No, not if the licensed insurer is regulated overseas and the transaction is subject to an approval process in a recognised jurisdiction where the licensed insurer is located (such as the State of Indiana, United States of America, where AIL is incorporated). In such cases, it would be unnecessary to duplicate the overseas approval process. If section 44 is extended to apply to the acquisition of insurance business by a licensed insurer from a non-licensed overseas insurer, an exemption should be allowed when the licensed insurer is regulated overseas and the transaction is subject to an approval process in a jurisdiction where the licensed insurer is located.
3.2.11: What do you think the appropriate threshold should be for a change of control to be notified to the Reserve Bank? Why?	AIL supports the current "control" threshold set out in section 26(4) of IPSA, i.e., a person having: • the power, directly or indirectly, to exercise, or control the exercise of, 50% or more of the voting rights in the insurer; or • 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.

3.2.12: Please comment on the appropriateness of: (a) replacing the fixed 20 working day timeframe for approvals with a 'within a reasonable time' timeframe, or (b) extending that timeframe to 45 working days. Please provide any other comments or options you consider appropriate.	Given that all transactions are unique with some being able to be dealt with by the Reserve Bank quickly and some requiring more time, AIL proposes a combination of the two suggested timeframes (i.e., within a reasonable time but no later than 45 working days).

4.2 A data and disclosure standard	
4.2.1: Should IPSA empower a data and disclosure standard that could set out disclosure requirements, including data that should be made available to the public?	AIL supports providing customers with higher quality (but not necessary more) data to inform customers' decision making. However, AIL does not think that public disclosures of comparative data would likely be used by, or be informative for, policyholders, and therefore AIL supports the Reserve Bank's current plans not to publish comparative data. However, if comparative data is to be published, the Reserve Bank should consult on its proposed plans at that stage. Before any data disclosure standards and requirements are finalised, the following matters should be carefully considered by the Reserve Bank (alongside consultation with the industry): • a thorough understanding as to the key drivers of customers' decision making when it comes to purchasing insurance; • ensuring that any data disclosure standards and requirements add value to customers' decision making rather than functioning as an information dump on customers; • ensuring that any data disclosure standards and requirements: o do not duplicate data already provided to the Reserve Bank (or any other regulator); o are sufficiently flexible to take into account the differing size of insurers in the market and the fact that overseas insurers may collect, organise and report on information in different ways to satisfy foreign law obligations; o if information is to be used to conduct industry-wide analysis, careful consideration to ensure the Reserve Bank is getting like-for-like data across the industry; o if they require the reporting of confidential or other commercially sensitive information, clear guidance on who will have access to that information and the protections that the Reserve Bank will put in place to maintain confidentiality.

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Tuesday 21 February 2023

Reserve Bank of New Zealand
Financial System Policy and Analysis – Financial Policy
PO Box 2498
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IPSA Review Governance, Supervisory Processes & Disclosure

Email: ipsareview@rbnz.govt.nz

I am writing to you to provide the submission of Cigna Life Insurance New Zealand Limited ("Cigna") regarding the review of the Insurance (Prudential Supervision) Act 2010 Options Paper 4: Governance, Supervisory Processes and Disclosure, released on 15 November 2022.

Cigna protects more than 450,000 New Zealanders with insurance policies. Our products and services include life, trauma, income protection, funeral and travel insurance. As a licensed insurer, we support the principles of IPSA – a cost-efficient regulatory regime, robust insurance sector and strong policyholder protection and security. Our key priorities include treating customers fairly and remaining responsive in our constantly evolving regulatory environment.

Our submission concentrates on a number of key issues that could directly impact Cigna, namely unintended consequences of the Scheme and general considerations. As a member of the Financial Services Council, we support and endorse their submission.

1. Fit & Proper

Cigna is supportive of initiatives that promote engagement between the RBNZ and insurers. We understand the desire to align IPSA with other benchmarks for insurance supervision e.g. the International Association of Insurance Supervisors (IAIS) Insurance Core Principles (ICPs), however do not agree with the suggestion of a licenced insurer obtaining the RBNZ's approval prior to appointing a director or relevant officer. This requirement could result in potential delays with onboarding or recruitment of key individuals in an already tight employment market. Recruiting roles for relevant officers may create an additional challenge for insurers if the RBNZ needs to approve the position, as a protracted approval process may mean that individuals are reluctant to resign from other positions to take up one of those roles. We also welcome further commentary around how this process will intersect with insurers' current Fit & Proper policies, to ensure there is no duplication of effort.

We agree that insurers should inform the RBNZ if they become aware of information that might reasonably cast doubt on a director or relevant officer's ongoing fit and proper status. We also support the extension of fit and proper requirements to senior managers reporting directly to the Chief Executive Officer. It would assist licensed insurers if the RBNZ published clear guidelines around eligibility criteria to ensure the correct individuals are captured by this requirement.

2. Directors' accountabilities & duties

It is important to ensure that directors & relevant officers remain appropriately accountable. Our view is that the existing director duties under IPSA are robust and already cover this. We believe that the addition of a further duty is unnecessary and would provide little benefit.

In terms of considering policyholder interests ahead of shareholder interests, we note that directors are required to give priority to policyholders over shareholders in a life statutory fund (clause 105). Given that virtually all of our business is life-related in a statutory fund, materially we are already giving such priority to policyholders. As such, we are keen to further understand the RBNZ's thinking around the benefit that this prioritised consideration would provide.

The current solvency duty relating to the statutory fund adopts a robust and risk-based approach, which we believe provides appropriate protection. We are keen to avoid overreach in this area, and would welcome further clarity around how commercial considerations would factor into any prioritised duty to policyholders, to ensure that these interests are appropriately balanced.

3. The Appointed Actuary

We would welcome clearer expectations from the RBNZ on the appointed actuary's role, by way of guidelines on reporting arrangements and relevance to broader governance structures. In principle, we are also supportive of an actuarial advice framework, as per the Australian regime. We welcome further information on what elements this framework would cover, and how the RBNZ sees this operating.

We are concerned that imposing civil pecuniary penalties on the appointed actuary will lead to unintended consequences such as dissuading individuals from following this career path and will presumably lead to increased costs within the industry if appointed actuaries require insurance. We would also welcome further detail around the circumstances and/or thresholds under which these penalties would be imposed.

We note the suggestion of the appointed actuary having explicit duties to policyholders. In order for us to form a view on this, it would be helpful to understand the breadth of these duties and how far they would extend – for example, whether the appointed actuary is expected to consider all conduct and culture related issues.

4. Governance Standard

We agree with the RBNZ's view that the board is at the heart of an insurer's corporate governance, and as such, should have an appropriate composition, robust operating procedures and systems for monitoring its own performance.

We acknowledge that IPSA does not currently include specific ongoing requirements in relation to governance, and in principle are supportive of an enforceable governance standard. However, we note that this should be developed and implemented in conjunction with the Governance Thematic Review, of which insurers will have not received specific feedback until mid-2023.

Although we broadly support the potential governance standard including considerations around board composition, this should be restricted to certain aspects such as independence rather than accountabilities, delegations or self-assessment. As proposed in the consultation document, if the RBNZ seeks to approve the appointment of directors generally, they are equally approving their suitability to perform the role. Over-regulation could result in unintended consequences such as lack of flexibility and agility for directors and conflict with individual company constitutions. It is also important that insurers are able to build a board that is the right size for their particular business structure.

By way of drafting & design of the governance standard, we believe this should be open for consultation with the industry to ensure appropriate attention on relevant issues at the correct

level. It should also be a combination of prescriptive rules and principles-based guidance. For example, the governance standard should have a clear focus on the right work that should be addressed by the board, rather than which Committee is managing it. Flexibility around these aspects would allow insurers to better respond to changing operating conditions. We would welcome further clarity around what the standard would encompass.

5. Risk Management

We are broadly supportive of using a corporate governance standard to ensure risk management is assigned effectively within the Board. However, we are keen to ensure that this is developed with flexibility in mind, to reflect the variety of board compositions that could exist in an optimised regime. We also welcome further details on the proposed risk management standard and encourage further consultation on this within the industry. We agree that there is further work required to right-size this in the context of the New Zealand market, giving appropriate consideration to long term risks and proportionality, current risk management considerations and best practice.

6. Supervisory Processes

Licensing

We consider it sensible and appropriate for the RBNZ to consult with the FMA before issuing or cancelling an insurer licence issued under IPSA.

Approvals for restructuring

We are supportive of a more consolidated process overall for restructuring approvals, but feel that this should be tailored to the type of transaction, given their fundamental differences and varying levels of complexity. This is a significant proposal that may have downstream impact on the future of the industry and would need detailed consultation in good faith. We suggest further work be done in this area followed by further consultation and engagement with the industry to fully comprehend any potential impacts.

7. Data and Disclosure

We are broadly supportive of a data and disclosure standard but to ensure consistency & efficiency, we would encourage further consultation and engagement with the industry on the determination of information that is in scope and reporting obligations more broadly.

Conclusion

Thank you for the opportunity to submit on the IPSA Options Paper on Governance, Supervisory Processes and Disclosure. We look forward to receiving further clarity around the considerations we have raised above, and welcome the opportunity for further engagement on various aspects of the Act.

Yours faithfully,

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Cigna Life Insurance New Zealand

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21 February 2023

Submission on Insurance (Prudential Supervision) Act 2010 – Options paper 4: Governance, Supervisory Processes and Disclosure

1 This is a submission by Dentons Kensington Swan on the Reserve Bank of New Zealand – Te Pūtea Matua's ('**Reserve Bank**') 15 November 2022 Options paper 4: Governance, Supervisory Processes and Disclosure ('**Options Paper**') as part of its review of the Insurance (Prudential Supervision) Act 2010 ('**IPSA**').

About Dentons Kensington Swan

2 Dentons Kensington Swan is one of New Zealand's premier law firms with a legal team comprising over 100 lawyers acting on government, commercial, and financial markets projects from our offices in Wellington and Auckland. We are part of Dentons, the world's largest law firm, with more than 12,000 lawyers in over 200 locations.

3 We have extensive experience advising insurers, financial advice providers, and other institutions who will be affected by the proposals set out in the Options Paper.

General comments

4 We continue to support the Reserve Bank's review of IPSA. We agree that it is important to reconsider the key operating provisions of IPSA with the experience of events which have followed its implementation and other regulatory developments impacting licensed insurers. We have focused on a select number of submission questions as set out below, feeding off our experience in advising insurer clients and the challenges they face.

5 Thank you for the opportunity to submit. We would welcome the opportunity to discuss any of the points we have raised.

Yours faithfully

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Specific responses to the Options Paper

2.0 Governance, key officers and control functions

2.2 Fit and proper

Q 2.2.1 Should IPSA be amended so that a licensed insurer must obtain the Reserve Bank's approval prior to appointing a director or relevant officer? Would this create any difficulties for insurers?

We do not agree that the approval of the Reserve Bank should be required for director or relevant officer appointments for licensed insurers. We understand the intention is to align IPSA with the Deposit Takers Bill and the International Association of Insurance Supervisors Insurance Core Principles. However, we see this as a regulatory overreach into governance and operational management powers that properly sit with a licensed insurer. The primary responsibility for any director or relevant officer appointment should sit with the entity's Board and Chair. Regulatory oversight and assurance is already covered off by requiring appointees to meet the relevant fit and proper requirements for their respective positions, with the Reserve Bank having power to take action if fit and proper assurances have been improperly given. In our view this is an appropriate approach to ensuring appointees suitability.

Imposing what effectively amounts to a veto right for the Reserve Bank on appointments not only diminishes an entity's self-governance powers, but it will also have a detrimental impact on recruitment and onboarding processes for directors and relevant officers. With a relatively tight labour market and a limited talent pool of suitable candidates available for appointment, adding an additional step to the process, involving the Reserve Bank second-guessing the insurer's processes and fit and proper assessment, is undesirable.

If the requirement for the Reserve Bank to approve appointments is included in IPSA, it will be essential that there is a clear, transparent and timely process in place for processing approval requests. An approach that would provide greater certainty for insurers and reduce our concerns would be to follow a similar approach to that applied under the Financial Markets Conduct Act 2013 ('**FMCA**') when the Financial Markets Authority ('**FMA**') considers the first product disclosure statement ('**PDS**') for a new offer.

Under the FMCA, the FMA has five working days to decide whether the PDS and intended offer will comply with the legislative requirements, or notify the issuer that it needs more time, in which case it can automatically extend the wait period to ten working days. If the PDS is not rejected within the relevant period, then applications are able to be accepted in reliance on the PDS. Such a default approval process/legislative waiting period would be preferable when considering insurer director appointments, as it would provide insurers with certainty as to the timeframe within which new director appointments will become effective.

Q 2.2.2 Should insurers have a duty to inform the Reserve Bank if they become aware of information that might reasonably cast doubt on a director or relevant officer's ongoing fit and proper status?

We do not support this duty being imposed on insurers. More specifically, the test of becoming aware of information that 'might reasonably cast doubt' is vague and unhelpful for insurers to assess. We believe this is a matter best left to the internal governance of an insurer, with insurers needing to take action if a director no longer meets any regulatory criteria for their appointment.

Put another way, if an insurer developed sufficient concerns, it would in all likelihood be compelled to remove the director, irrespective of any Reserve Bank notification requirement. We are concerned that as the proposed duty is couched, insurers and their senior management will be placed in an untenable position, with practicalities of implementing the new duty unclear and the self-governance of insurers unduly compromised as a consequence.

Q 2.2.3 Are there any reasons for, or against, extending fit and proper requirements to senior managers? Is 'managers that report directly to the chief executive officer' a useful way of delineating who should be captured as a 'senior manager'?

We do not support fit and proper requirements being extended to senior managers beyond the CEO, CFO and Acting Actuary. We do not believe the case for making such an extension has been made out, whereas the practical impact on an insurer's recruitment process that such an extension would have is clear. Given the breadth of functions that might be regarded as falling within a senior manager role, the factors the Reserve Bank would need to take into account would need to be so flexible as to make the process uncertain and prone to subjectivity, which may not achieve the desired objective.

If, notwithstanding our concerns, the fit and proper requirements are extended to senior managers, defining the extended class as 'managers that report directly to the chief executive officer' is too broad. This standard would capture individuals who are not involved in areas of an insurer's operation that impact on prudential considerations. Any extension of fit and proper requirements should only be to roles that have the ability to materially affect the whole, or a substantial part, of a business or its financial standing.

If senior managers need to meet a fit and proper requirement, a more appropriate option would be to instead have licensed insurers certify that their senior managers are fit and proper, without needing the approval of the Reserve Bank. This approach would still provide the additional layer of desired protection with a more appropriate balance with commercial considerations for what are non-governance roles. A self-certification approach also aligns with what we understand to be the UK and Australian approaches, whereby regulatory approval of appointees to roles below director and executive level managers is not typically required.

To avoid confusion, we do not consider the term 'senior manager' should be used in IPSA. It is already used in the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the FMCA and has a different definition, namely 'in relation to a person (A), means a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of A (for example, a chief executive or a chief financial officer)'. We do not consider this existing regulatory definition of 'senior manager' is appropriate in the context of prudential supervision legislation, but using the same term in IPSA with a different definition will cause an undesirable level of confusion.

2.3 Directors' accountabilities and duties

Q 2.3.1 Are current directors duties under IPSA appropriate? Or is there a case for imposing wider duties, to reflect the potential impact of insurer distress on policyholders and the wider economy?

In our view, the current duties under IPSA are appropriate for directors. They provide a robust set of duties that are well-understood and strike an appropriate balance. Imposing wider duties upon directors would add additional burden on directors and give rise to potential conflict in discharging competing duties. We do not believe such an extension would add tangible benefit to the regime.

There is a concern that wider duties would create an uncertain board environment, as directors balance their accountability for collective decisions and their individual director decisions. This undermines effective decision-making and the benefits of diversity of thought in board compositions.

Q 2.3.2 If there is a case for broader duties, which approach is more appropriate: the narrower approach proposed in the DTA, the extensive approach adopted in the UK/Australia, or some other approach?

We disagree that there is a case for broader duties.

However, if the Reserve Bank proceeds with recommending broader duties be imposed, then we consider that the limited approached proposed in the DTA would be more appropriate than the extensive approach to

imposing duties currently adopted in the UK and Australia. As noted in the Options Paper, the more extensive approach adds complexity and would require significant resourcing. In our view, such an extensive approach would result in a number of directors reconsidering their ongoing involvement in the sector due to their increased personal responsibility and potential liability, as well as the extent of their required involvement, which risks undermining the objective of improved governance.

Q 2.3.4 Other than the duty to life policyholders established under the statutory fund regime, are there any other areas under the IPSA regime where directors or insurers should be obliged to consider policyholder interests or give priority to policyholder interests ahead of those of shareholders or members?

We consider the current requirements relating to policyholder interests in relation to the statutory fund to be sufficient. We do not believe that adding a requirement to consider policyholder interests, or to give priority to policyholder interests, adds any practical value over and above the other requirements under IPSA. However, adding such a requirement will add an undesirable additional layer of complexity to board decision-making.

Specifically, we do not see it as necessary for IPSA to go further in requiring policyholder interests to be given greater consideration, given the newly introduced conduct licensing regime. Should IPSA impose additional obligations in relation to considering policyholder interests, there may be scope creep or overlap between prudential regulation under IPSA and the duties that will be imposed upon insurers by the FMA under the Financial Markets (Conduct of Financial Institutions) Amendment Act 2022 ('**CoFI**'). Policyholder interest considerations should be deemed outside the scope of IPSA to avoid unnecessary overlap and duplication of compliance requirements for insurers between IPSA and CoFI, and the consequent costs insurers would incur. In our view, the new CoFI regime adequately addresses the concerns raised in the Options Paper when it comes to appropriately taking policyholder interests into account.

2.7 A governance standard

Q 2.7.1 Do you agree that it would be appropriate for IPSA to empower a governance standard?

We support the adoption of a governance standard under IPSA. The key rationale will be to ensure the governance standard is fit for purpose and flexible enough to accommodate different governance models and sizes of insurers. As noted in paragraph 2.7.9 of the Options Paper, there should be full public consultation on the detailed content of such standard and draw on the current cross-sector governance thematic reviews.

Q 2.7.2 Can you suggest any principles that should guide the drafting of empowering provisions or the design of governance standards?

We support the Reserve Bank taking a principles-based approach when drafting a governance standard. This will ensure the standard is appropriate and suitable to wide range of different governance models that insurers may have. Such a standard should not be overly prescriptive to allow for flexibility. Any standard adopted should include examples of how the requirements could be met across the different ranges of insurer business models.

3.0 Supervisory processes

3.1 Licensing

Q 3.1.1 Do you agree that it is appropriate for IPSA to contain a requirement for RBNZ to consult with the FMA, before the RBNZ issues or cancels an insurer licence issued under IPSA?

We support a requirement that the Reserve Bank consult with the FMA before issuing or cancelling a licence under IPSA. However, this should only be a requirement when the relevant entity is also licensed by the FMA. Equally there should be a consultation obligation on the FMA to liaise with the Reserve Bank if it intends to cancel an FMA licence held by an insurer which would provide consistency of approach across the regimes. At present this reciprocal requirement is only placed on the FMA under CoFI for financial institution licenses under section 409A of the FMCA.

Any liaison between the Reserve Bank and the FMA will need to be limited in nature to ensure the scope of factors each party takes into consideration are relevant to each regime. There is a concern that discussions may become blurred, which may result in the Reserve Bank factoring in considerations that are not relevant to prudential matters. We believe any discussions or actions arising out of such consultation should be disclosed to the insurer in question for the sake of transparency, and to ensure the organisation has a chance to mitigate any concerns.

3.2 Approvals for restructuring

Q3.2.1 Do you agree with the proposal to consolidate the approval process for change of control, change of corporate form, transfers and amalgamations into a single test? Why?

We agree with the proposal to adopt a consolidated approval process for change of control, change of corporate form, transfers and amalgamations, and a process that has a focus on substance over form. As outlined in our previous submissions, the focus will need to remain on the Reserve Bank applying a transparent, proportional approach when considering applications to account for the varying insurer structures.

Q3.2.3 Please identify any issues that you believe should be governed by a 'red line' prohibition – i.e. transactions that the Reserve Bank must not approve.

We are opposed to any use of "red line" prohibitions for any issues that arise through the application process. We believe it is more appropriate for the Reserve Bank to approach applications using a rebuttable presumption of approval, with denials based on the specific circumstances of the application being reviewed. Approval or denial should be decided on a principled basis in each case. Taking a "red line" approach is unduly prescriptive and inappropriate for assessing applications. To the extent that the Reserve Bank identifies factors that it would regard as red line prohibitions to applications being progressed, we believe this is best communicated in the form of guidance or other commentary. This provides the Reserve Bank with greater flexibility in assessing applications in an ever-changing regulatory and economic environment, which we believe is desirable.

Q3.2.4 Please identify any constraints that you think should be placed on the Reserve Bank's ability to attach conditions to its approval of a restructuring.

The Reserve Bank should be required to give reasons for declining an application for approval, or reasons for imposing any conditions, and those reasons should identify the particular prudential concerns the Reserve Bank has with the proposed restructuring. Any decision to impose conditions or decline an application should be provisional at first instance when communicated to the applicant (along with the reasons for that decision), with opportunity for the applicant to respond or provide additional information prior to a final decision by the Reserve Bank.

Q3.2.5 What do you consider to be the appropriate mechanism for setting out details of the approval process: primary legislation, secondary legislation (i.e. regulations), guidelines, or other?

The most appropriate mechanism for outlining the approval process is in guidelines. This mechanism allows the Reserve Bank to more easily modify the process as it considers applications and its thinking evolves, with greater flexibility to respond to proposed restructurings than hard-coding the approval process into primary or secondary legislation.

Q 3.2.9 Should approval processes include a requirement for us to consult with the FMA as part of our approval decision-making?

We do not agree that the FMA should be consulted with as a matter of course as part of the Reserve Bank's approval decision-making process. This would not add value, given the relevant considerations required. Instead, consultation would simply impose an additional administrative burden on both regulators and delay that seems unnecessary in the circumstances. If the Reserve Bank had any particular concerns with an application where it consider input from the FMA would be desirable, seeking that input is a pathway open to it, without hard-coding it into the law.

We note CoFI does not include a requirement for the FMA to consult with the Reserve Bank when there is a change requested to a CoFI licence. Imposing such a requirement under IPSA would be inconsistent. It will simply be a matter for the relevant insurer to inform the FMA of any restructuring process from a conduct perspective once the Reserve Bank's approval process has been completed first.

Q3.2.12 Please comment on the appropriateness of: (a) replacing the fixed 20 working day timeframe for approvals with a 'within a reasonable time' timeframe, or (b) extending that timeframe to 45 working days. Please provide any other comments or options you consider appropriate.

In our view, allowing the Reserve Bank over six weeks to respond to an application could provide an undue drag on restructuring and 'within a reasonable time' may vary significantly depending on internal resourcing available at the Reserve Bank. We recommend the existing fixed 20 working day timeframe for approval is appropriate, with an additional presumption of approval if the Reserve Bank does not respond within the 20-working day period. This will provide more certainty for insurers going through this process.

21 February 2023

Reserve Bank of New Zealand
Financial System Policy and Analysis - Financial Policy
WELLINGTON

By Email: ipsareview@rbnz.govt.nz

IPSA Review – Governance, Supervisory Processes and Disclosure

We appreciate the opportunity to provide feedback on the Reserve Bank's IPSA Review Governance, Supervisory Processes and Disclosure consultation, issued on 15 November 2022.

This letter comprises Resolution Life Australasia Limited (New Zealand branch) (**RLA**) and Resolution Life New Zealand Limited's (**RLNZ**) submission.

Background to RLA and RLNZ

The Resolution Life Group in New Zealand includes both RLA and RLNZ.

RLA is a New Zealand-licensed life insurance business and a branch of the Australian life insurance company Resolution Life Australasia Limited (formerly AMP Life Limited). RLA has been operating in New Zealand since its incorporation in 1935. Over the following 85 years, RLA has grown to become one of New Zealand's largest manufacturers of life insurance and operates now as a leading in-force specialist life insurer. RLA is a significant player and of systemic importance in the New Zealand life insurance market paying out $NZ191m in claims in 2021.

RLNZ was incorporated following engagement with the Reserve Bank and the Australian Prudential Regulation Authority as part of AMP Life's acquisition by Resolution Life in June 2020. The incorporation of RLNZ was designed to help ensure that the benefits that New Zealand policyholders enjoy under their Resolution Life policies are maintained and protected. RLNZ is a locally incorporated insurer governed by a board of majority independent directors and supervised by the Reserve Bank. RLNZ is the trustee of the Resolution Life NZ Trust Fund, which holds a pool of investment assets that support the policies issued by Resolution Life to New Zealand policyholders.

Submission

RLA and RLNZ broadly endorse the industry submission from the Financial Services Council of New Zealand Incorporated (**FSC**). We have not sought to re-iterate all of the points raised by the FSC. Instead we highlight in the Appendix to this letter the consultation questions where RLA and RLNZ have additional comment.

We would be happy to discuss any of our feedback directly. Please contact s9(2)(a) s9(2)(a) in the first instance.

Your sincerely

s9(2)(a)

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Resolution Life Australasia Limited

Your sincerely

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s9(2)(a)

Resolution Life New Zealand Limited

APPENDIX

2.2 Fit and proper

2.2.1 Should IPSA be amended so that a licensed insurer must obtain the Reserve Bank's approval prior to appointing a director or relevant officer? Would this create any difficulties for insurers?

We agree with the FSC, for broadly the same reasons, that IPSA should not be amended so that a licensed insurer must obtain the Reserve Bank's approval prior to appointing a director or relevant officer.

We also agree that further matters would need to be addressed if the Reserve Bank was to extend its involvement in director and relevant officer appointments. In addition to the points raised by the FSC, we consider this would need to include consideration of:

- The legal status of any proposed directors and relevant officers pending Reserve Bank approval; and
- Any additional responsibilities or liabilities of the Reserve Bank in connection with the conduct of any directors or relevant officers it has been involved in approving.

We agree with the FSC that if an additional process was to be introduced, a preferable way forward would be to couple the existing fit and proper requirements with a Reserve Bank non-objection process. We envisage this might involve an appointment proceeding absent the Reserve Bank notifying the insurer of an objection within a set timeframe.

2.2.3 Are there any reasons for, or against, extending fit and proper requirements to senior managers? Is 'managers that report directly to the chief executive officer' a useful way of delineating who should be captured as a 'senior manager'?

We agree with the FSC that extending the fit and proper approval requirements to all an entity's senior managers, would create a material administrative burden for the Reserve Bank and insurers without a clear benefit.

We agree that insurers should have robust recruitment processes that include fit and proper considerations for senior managers. However, we suggest that this could be addressed by the Reserve Bank utilising fit and proper guidelines in the first instance that set out the Reserve Bank's expectations in relation to the appointment of senior managers.

2.3 Directors' accountability and duties

2.3.4 Other than the duty to life policyholders established under the statutory fund regime, are there any other areas under the IPSA regime where directors or insurers should be obliged to consider policyholder interests or give priority to policyholder interests ahead of those of shareholders or members?

In addition to the comments by the FSC, we note the Reserve Bank's existing ability to address any policyholder interest concerns through the use of licence conditions.

2.4 The appointed actuary

2.4.1 Would it be helpful for standards to:

(a) set out clearer expectations for the appointed actuary's role;

We agree that clearer expectations for appointed actuaries would be helpful and a requirement for an actuarial advice framework.

2.4.4 Should the Reserve Bank impose a statutory duty on the appointed actuary to use due diligence to carry out their assigned role, enforceable with a civil pecuniary penalty?

We echo the FSC's submission in questioning the need for the introduction under IPSA of new statutory duties for appointed actuaries, especially having regard to appointed actuaries' already existing duties.

We suggest a preferable approach might be for the Reserve Bank to introduce an over-arching statement of the Reserve Bank's wider expectations of the appointed actuary role and we invite the Reserve Bank to engage further on the precise wording for that statement.

2.4.5 Should appointed actuaries have a duty to identify and present the interests of policyholders? If so, should that be a general duty or only one that applies in specific contexts (such as preparing the financial condition report?)

We do not support the introduction of a new duty for appointed actuaries on such broad terms. We agree with the FSC's comments regarding the uncertainty surrounding what a duty framed in that way would encompass and potential for it to extend beyond the appointed actuary's remit.

A duty framed in that way could depart, by way of example, from the appointed actuary's purpose and function in preparing a financial condition report. On one view, having a solvent insurer is also in the interests of policyholders and so their needs are met by the appointed actuary that way.

2.5 The auditor

2.5.1 Should IPSA include a provision requiring auditors to notify the Reserve Bank if they become aware that an insurer is failing to comply with its accounting and financial reporting obligations?

We agree with the FSC comments and submission that auditors should be required to engage with the insurer to seek clarification prior to any notification to the Reserve Bank. We also consider:

- Any reporting obligation should include a materiality threshold.

  This threshold could extend to say matters that an auditor considers will or are likely to impact on an insurer's ability to meet its commitments to policy holders, or a notification threshold similar to that which applies for auditors to APRA in Australia.

- Consideration would also need to be given to the timing and currency of the matters that an auditor would need to notify.

This would need to include consideration, by way of example, of a deficiency an auditor might identify was present at a point in time near the beginning of a financial year, but which had been fully addressed and resolved by year end.

2.6 Banning orders

2.6.1 Should a serious and persistent breach of statutory due diligence duties (if they were introduced) be grounds on which a court might issue an industry-wide banning order?

Similar to the FSC, we do not support the introduction of broad banning orders of this kind.

On one view, any breach of IPSA is serious. Accordingly, if terms along these lines were to be introduced we consider further consideration would need to be given to the materiality thresholds that would apply. How would the Reserve Bank decide what conduct might warrant a banning order? Those thresholds could usefully be explained in Reserve Bank guidance.

3.2 Approvals for restructuring

3.2.1 Do you agree with the proposal to consolidate the approval process for change of control, change of corporate form, transfers and amalgamations into a single test? Why?

We support any changes aimed at streamlining the Reserve Bank approval process or improving the efficiency and transparency of that process. However, further detail is needed regarding the Reserve Bank's proposals in order to provide full comment.

Further information would be helpful, for example, in clarifying the scope and materiality of transactions that the Reserve Bank approval process might apply to. Would it apply, for example, to offshore transactions: involving a foreign incorporated company like RLA that is also licensed in New Zealand; or involving an offshore entity that is part of a New Zealand licensed insurer's broader corporate group and transaction that is significantly remote to New Zealand and its policyholders?

If a Reserve Bank approval process was to apply in these kind of situations above, we suggest that an abbreviated process should also be available, with scope for the Reserve Bank to work with offshore regulators to avoid any unnecessary duplication and delay.

3.2.2 Do the proposed permissible considerations cover an appropriate range of considerations or are there other matters the Reserve Bank should be considering?

We support in principle the proposed inclusion in IPSA of permissible considerations with further detail of the application process, decision-making criteria and scope of conditions then being covered in regulations, but would want an opportunity to give full consideration to those regulations.

3.2.9 Should approval processes include a requirement for us to consult with the FMA as part of our approval decision-making?

We agree with the FSC that IPSA should not introduce an additional FMA approval process. However, we are not opposed to the Reserve Bank liaising with the FMA in an information gathering context to assist the Reserve Bank with its approval decision making. Of course, any such engagement with the FMA is only likely to be relevant where an entity is licensed with the FMA.

Financial Services Council NZ

Grow the financial confidence and wellbeing of New Zealanders

Tuesday 21 February 2023

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IPSA Review Governance, supervisory processes and disclosure

This submission on the Review of the Insurance (Prudential Supervision) Act 2010 Options Paper 4: Options Paper 4: Governance, supervisory processes and disclosure, 15 November 2022 (the Options Paper), is from the Financial Services Council of New Zealand Incorporated (FSC).

As the voice of the sector, the FSC is a non-profit member organisation with a vision to grow the financial confidence and wellbeing of New Zealanders. FSC members commit to delivering strong consumer outcomes from a professional and sustainable financial services sector. Our 110 members manage funds of more than $95bn and pay out claims of $2.8bn per year (life and health insurance). Members include the major insurers in life, health, disability and income insurance, fund managers, KiwiSaver, and workplace savings schemes (including restricted schemes), professional service providers, and technology providers to the financial services sector.

Our submission has been developed through consultation with FSC members and represents the views of our members and our industry. We acknowledge the time and input of our members in contributing to this submission.

We welcome the opportunity to provide feedback on the fourth of five consultations as part the Reserve Bank of New Zealand (RB) comprehensive review of the Insurance (Prudential Supervision) Act 2010 (the IPSA). Please note, we have removed the questions that our members have no feedback on at this time.

Our member organisations have robust process and the required expertise to ensure that directors and relevant officers meet the fit and proper requirements, both at the time of appointment and on an ongoing basis. We do not support the IPSA being amended so that a licensed insurer must obtain the RB's approval prior to these appointments and the ongoing duty to inform the RB of any doubt on their fit and proper status. We consider this to be unnecessary and potentially an overreach of regulator oversight. In addition, without specific examples, we query if this a problem in New Zealand that needs to be addressed.

We support an actuarial advice framework, however most of the remaining proposals for appointed actuaries may be unnecessary given current requirements and may be perceived as a deterrent to the already small pool of suitable candidates.

As noted throughout our submission, there are areas that require further consideration and additional consultation, such as for the proposed governance, data disclosure and risk management standards. More detail is sought on a data disclosure standard, and the proposals to require directors and officers to put the interests of policyholders ahead of shareholders. We welcome continued discussions and engagement to ensure the IPSA provides a workable framework on governance and supervisory processes for both our insurance members and the RB.

I can be contacted on s9(2)(a) s9(2)(a) or s9(2)(a) s9(2)(a) at s9(2)(a), to discuss any element of our submission.

Yours sincerely

s9(2)(a)

Financial Services Council of New Zealand Incorporated

2.0 Governance, key officers and control functions

2.2 Fit and proper

Q 2.2.1 Should IPSA be amended so that a licensed insurer must obtain the Reserve Bank's approval prior to appointing a director or relevant officer? Would this create any difficulties for insurers?

Whilst we understand the motivation is to align with the Deposit Takers Bill (DTB) and the International Association of Insurance Supervisors (IAIS) Insurance Core Principles (ICPs), it is not clear what problem this is seeking to address. We do not support the IPSA being amended so that a licensed insurer must obtain the RB's approval prior to appointing a director or relevant officer. We consider this may blur the lines between regulator and insurers and be subject to criticism of regulatory overreach into the operational management of insurers. It may slow down the recruitment and onboarding process for directors and relevant officers unless provisional appointments are permitted. The primary responsibility for their appointment and ensuring that directors have the necessary skills, qualifications and expertise should lie with an entity's Board and Chair.

The Board should approve the appointment of relevant officers and completion of the fit and proper requirements should suffice for appointment. It would be helpful to include in the IPSA a requirement for the RB to provide a non-objection response (or otherwise) within a specified timeframe (for example, 20 working days) once fit and proper certificates are provided to the RB. This would provide confirmation to insurers as to whether the RB is satisfied with the certificates.

If the requirement to obtain RB prior approval were to be progressed, the following matters would need to be addressed:

- What are the specific concerns of the RB with the current process under the IPSA and would obtaining RB prior approval address these?
- We would appreciate greater clarity on the level of accountability the RB may have for the approval of directors and relevant officers that may prove not to be fit and proper.
- On what grounds could the RB decline to approve a director or relevant officer? Industry would require clear guidance detailing these grounds and we expect the grounds would be serious.
- Clear timeframes would need to be specified for the RB to respond to a request for approval to ensure that an insurer can appoint a director or relevant officer to a role when needed for succession and continuity.
- Consideration given to any potential employment law implications.

Q 2.2.2 Should insurers have a duty to inform the Reserve Bank if they become aware of information that might reasonably cast doubt on a director or relevant officer's ongoing fit and proper status?

This suggested duty is vague and broad leaving insurers in an uncertain position. The wording in section 32 of the DTB "reasonably form the opinion that a director or senior manager of the deposit taker is not, or is not likely to be, a fit and proper person to hold the relevant position" is also vague.

A situation potentially affecting ongoing fit and proper status is initially an internal matter for an insurer to manage and determine in accordance with its fit and proper policy and the individual's terms of appointment and employment contract. Following internal investigation, should an insurer decide that an individual is no longer fit and proper, then it may be appropriate to require an insurer to notify the RB within 20 working days.

If the introduction of this duty were to be considered, clarity would be required on the process following information being provided by an insurer to the RB.

Q 2.2.3 Are there any reasons for, or against, extending fit and proper requirements to senior managers? Is 'managers that report directly to the chief executive officer' a useful way of delineating who should be captured as a 'senior manager'?

If fit and proper requirements were to be extended, we consider that "managers that report directly to the chief executive officer" is too broad. This would capture individuals that do not fall within the purpose of this remit, and it is not clear what purpose this would serve. In addition, should the requirement for the RB to approve the appointment and be informed of the ongoing fit and proper status of relevant individuals be introduced, then extending the fit and proper requirements to multiple additional roles would create an administrative burden for both the RB and insurers without a clear benefit.

Any extension of fit and proper requirements should only be to roles that have the ability to materially affect the whole, or a substantial part, of a business or its financial standing. In this regard, we consider that it could potentially be the Chief Risk Officer or equivalent (noting that the chief executive officer, chief financial officer, and appointed actuary are already subject to fit and proper requirements under the IPSA).

To avoid confusion, we do not consider the term 'senior manager' should be used in IPSA. It is already used in the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the Financial Markets Conduct Act 2013 (FMCA) and has a different definition, namely "in relation to a person (A), means a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of A (for example, a chief executive or a chief financial officer)". We do not consider this definition of 'senior manager' is appropriate in the context of prudential supervision legislation.

2.3 Directors' accountabilities and duties

Q 2.3.1 Are current directors duties under IPSA appropriate? Or is there a case for imposing wider duties, to reflect the potential impact of insurer distress on policyholders and the wider economy?

We consider the current directors' duties to be appropriate and there is not a case for imposing wider duties as in doing so would add little benefit for additional cost, especially for those who are elected directors. There is also the possible unintended consequence of losing quality directors.

Q 2.3.2 If there is a case for broader duties, which approach is more appropriate: the narrower approach proposed in the DTA, the extensive approach adopted in the UK/Australia, or some other approach?

We do not consider there to be a case for broader duties. However, if it is determined there is, then the narrower approach, consistent with the DTA, would be more appropriate. There is no obvious rationale why insurers would differ from deposit takers in this regard.

We understand that the Government is intending to look at an executive accountability regime for banks, non-bank deposit takers and insurers with a cross agency process involving the RB, the MBIE and the FMA and this work is currently on hold. Given the potential scope of any such regime would apply not only to insurers, it would be more appropriately considered separately from the IPSA, noting also that it was not part of the review of prudential regulation of deposit takers.

Q 2.3.3 Are there any other considerations you would like to draw to our attention when thinking about director's duties?

There are different types of directors, namely shareholder elected, member elected and co-opted. The different needs and expectations of these cohorts of directors should be considered.

Q 2.3.4 Other than the duty to life policyholders established under the statutory fund regime, are there any other areas under the IPSA regime where directors or insurers should be obliged to consider policyholder interests or give priority to policyholder interests ahead of those of shareholders or members?

We suggest further consideration is required on the proposals to require directors and officers to put the interests of policyholders ahead of shareholder's needs. The long term nature of life insurance contracts mean it is in the policyholders' interests for the company to remain commercially viable for the duration of their contract. This requires the financial performance of the company to be sufficient to ensure additional investment into the company will continue to occur into the future.

Requirements for the company to put policyholder interests ahead of shareholder interests, without including commercial viability on the policyholder interests' side, may mean actions are then taken that challenge these interests, potentially resulting in restricted investment into the ongoing development of the business.

It would not be in the interests of New Zealand or of policyholders for life insurance businesses to effectively go into run-off mode due to a lack of attractiveness to new investment.

2.4 The Appointed Actuary

Q2.4.1 Would it be helpful for standards to:
(a) set out clearer expectations for the appointed actuary's role;
(b) set out the appointed actuary's place in the insurer's governance structures; and/or
(c) require insurers to explicitly consider resourcing needs for the appointed actuary role?

(a) We consider clearer expectations would be helpful. Care is required to ensure that the requirements are not too prescriptive as companies, and hence the role, can all be quite different. A possible approach could be for the company to document an appointed actuary advice framework (the minimum requirements for which are set out in the standard) that can be referenced by the risk management framework.

(b) We consider that this, and the requirement to explicitly consider resourcing needs for the appointed actuary role, are appropriate for the insurer to determine rather than the RB. We note that setting out the appointed actuary's place in the insurer's governance structures has difficulties due to the differences between companies. One possible option could be a requirement for the appointed actuary to have demonstrable, and unfettered, access to the Board.

(c) Resourcing needs are required to be considered for all roles, not just the appointed actuary.

Q 2.4.2 Would it be valuable to require insurers to have an actuarial advice framework in place under IPSA?

We support this suggestion as noted in response to Q 2.4.1(a) above.

Q2.4.3 To what extent do you think that the Reserve Bank's power to remove an appointed actuary based on fit and proper requirements provides adequate incentives and sanctioning power, in light of the role that appointed actuaries play in the regulatory framework?

We consider section 39 of the IPSA already provides adequate incentives and sanctioning power. Being removed as an appointed actuary based on fit and proper requirements would have severe implications for the future career opportunities for an appointed actuary.

Q2.4.4 Should the Reserve Bank impose a statutory duty on the appointed actuary to use due diligence to carry out their assigned role, enforceable with a civil pecuniary penalty?

We question whether a statutory duty is necessary given actuaries are subject to professional standards, a code of conduct and disciplinary scheme and actuarial information is subject to external audit (for example, information contained in the financial statements and Insurance Solvency Returns). There is already an insufficient pool of suitable candidates for appointed actuary roles and increased compliance costs is likely to reduce this further.

Q2.4.5 Should appointed actuaries have a duty to identify and present the interests of policyholders? If so, should that be a general duty or only one that applies in specific contexts (such as preparing the financial condition report?)

We support the interests of policyholders being considered and as noted by the RB, the appointed actuary's support to boards and senior management "can greatly strengthen an insurer's risk and capital management and lead to the increased security of policyholders".[1]

At this stage, it is difficult to comment in detail on this question as it is not clear what is meant by "identify and present" the interests of policyholders and this may potentially be broader than the remit of the appointed actuary and would be more suited to a customer advocacy type role. It is also not clear what is meant by the "interests" of policyholders. Policyholders may have different interests depending on their situation, for example, whether they have an active claim or not. Therefore, whether any such duty should be general or specific would depend on what is meant by "identify and present the interests of policyholders".

2.5 The Auditor

Q2.5.1 Should IPSA include a provision requiring auditors to notify the Reserve Bank if they become aware that an insurer is failing to comply with its accounting and financial reporting obligations?

If this provision is introduced, then auditors should be required to engage with the insurer on any such issues to seek clarification prior to notifying the RB.

2.6 Banning orders

Q 2.6.1 Should a serious and persistent breach of statutory due diligence duties (if they were introduced) be grounds on which a court might issue an industry-wide banning order?

We do not support this approach.

[1] Reserve Bank of New Zealand Appointed Actuary Thematic Review, How the role is working in practice and recommendations for improvements, June 2020, page 3.

2.7 A governance standard

Q 2.7.1 Do you agree that it would be appropriate for IPSA to empower a governance standard?

We consider a governance standard to be more useful than governance guidance, as it creates more certainty. However, it needs to be a fit for purpose standard that recognises different governance models. As noted in paragraph 2.7.9 of the Options Paper, there should be full public consultation on the detailed content of such standard. We also encourage alignment with any other regulatory guidance, such as that provided by the FMA.

Q 2.7.2 Can you suggest any principles that should guide the drafting of empowering provisions or the design of governance standards?

We agree with paragraph 2.7.12 of the Options Paper that a mixture of principle based rules and prescriptive requirements should guide the drafting.

2.8 Risk management

Q 2.8.1 Do you think it is appropriate for IPSA to empower a risk management standard? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

We consider this is appropriate, subject to the detail of such standard. As noted in paragraph 2.8.10 of the Options Paper, there should be full public consultation on the content of such standard including the appropriate lead time for implementing such a standard.

Q 2.8.2 Do you think it is appropriate for IPSA to empower a standard requiring an ICAAP/ORSA process? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

We consider this to be appropriate, as long as it caters for an insurer's size and resources, is principles based and outcomes focussed and is aligned to other standards or timeframes defined by the sector or organisation. There should be full public consultation on the content of such standard including the appropriate lead time for implementing such a standard.

3.0 Supervisory processes

3.1 Licensing

Q 3.1.1 Do you agree that it is appropriate for IPSA to contain a requirement for RBNZ to consult with the FMA, before the RBNZ issues or cancels an insurer licence issued under IPSA?

Consultation with the FMA should only be relevant if the entity is also licensed by the FMA. There should be a commensurate obligation on the FMA to also liaise with the RB if they intend to cancel an FMA licence held by an insurer. At present this only seems to be required for financial institution licenses under section 409A of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI Act).

3.2 Approvals for restructuring

Q3.2.1 Do you agree with the proposal to consolidate the approval process for change of control, change of corporate form, transfers and amalgamations into a single test? Why?

We support a consolidated and more efficient process which enables the less challenging matters to be dealt with expeditiously (regardless of whether it may be a change of control or a book transfer) and a more substantial transaction to be reviewed on its merits. The key consideration would be to ensure transparency, so the RB has the ability to make these distinctions supported by the continuation of thorough diligent processes.

Q3.2.2 Do the proposed permissible considerations cover an appropriate range of considerations or are there other matters the Reserve Bank should be considering?

The proposed permissible considerations are considered appropriate.

Q3.2.3 Please identify any issues that you believe should be governed by a 'red line' prohibition – i.e. transactions that the Reserve Bank must not approve.

Acquisitions or change of control by sanctioned countries are considered to be such transactions. In the life insurance space, those transactions will negatively impact the statutory fund by bringing it below specified levels.

Q3.2.5 What do you consider to be the appropriate mechanism for setting out details of the approval process: primary legislation, secondary legislation (i.e. regulations), guidelines, or other?

We consider primary legislation, supported by guidelines, has worked effectively to date.

Q 3.2.7 Should the requirements to consider policyholder interests be different for statutory funds than for other restructuring transactions for which Reserve Bank approval is required?

We support the combination of a statutory fund and the RB's approval of changes to Capital Management Plan, as they give the RB a lot more control and oversight than they have of transactions that do not have statutory funds.

We note the comment in paragraph 3.2.36 of the Options Paper, that "some 'short-term' policies s (e.g. health insurance) may also share some of these characteristics (e.g. the difficulty at least some policyholders would face in moving to an alternative provider)". Defining health insurance as short-term seems to conflict with the RB Interim Solvency Standard 2023 (ISS 2023), which defines 'short-term' or 'long-term' insurance contracts as whether or not they have specific features such as a guarantee of future insurability. It is therefore confusing to use an insurance product class as an example of 'short-term' in this context, as some insurers may treat health insurance as 'long-term' under the ISS 2023.

However, we agree that health insurance policyholders would share similar difficulties in moving providers as they would under life insurance, both typically being insurance products that are underwritten at the point of sale.

Q3.2.8 Would it be helpful for Reserve Bank guidance on approval processes to say more about how we interpret the requirement to consider policyholder interests?

Guidance in this space would be considered useful. This would give applicants insight into the areas that their application should focus on.

Q 3.2.9 Should approval processes include a requirement for us to consult with the FMA as part of our approval decision-making?

We support alignment and a complementary approach, especially with the introduction of a financial institution licence pursuant to the CoFI Act, the FMCA and regulations. However, we note that on 6 August 2021, the FSC submitted on the MBIE policy document, Assess Financial Institutions upon Change in Control, and did not support the introduction of a regulatory approval from the FMA for reasons including, but not limited, to costs, complexity, and practical implications.

Q3.2.11 What do you think the appropriate threshold should be for a change of control to be notified to the Reserve Bank? Why?

We consider the appropriate threshold to be 50%, unless a previous shareholder as a major shareholder increases its shareholding by less than 10% which tips it over the 50% threshold.

Q3.2.12 Please comment on the appropriateness of: (a) replacing the fixed 20 working day timeframe for approvals with a 'within a reasonable time' timeframe, or (b) extending that timeframe to 45 working days. Please provide any other comments or options you consider appropriate.

Given that all restructuring transactions are unique and can result in a wide range of timeframes, as noted, this can take in excess of six months for complex transactions. As such, a fixed timeframe (whether 20 days, 45 days, or other timeframe) is unlikely to be sufficient in every case. We therefore propose that "within a reasonable timeframe" is used, with insurers being given an estimate of what this might be once the RB has reviewed the application and considered the complexity of the transaction.

4.0 Data and disclosure

4.2 A data and disclosure standard

Q4.2.1 Should IPSA empower a data and disclosure standard that could set out disclosure requirements, including data that should be made available to the public?

It is difficult to comment in detail on this when it is not known how the powers would be used, what data would be requested from insurers and what data would be made available to the public.

Purpose of data

Regarding the publication of data for market discipline, we consider caution is needed as insurers will have differences that may not be apparent to the audience leading to comparisons that are not like for like. Examples of such differences are ownership structures and legacy versus contemporary books.

Regarding disclosure requirements for the public, we have concerns that providing the public with lengthy and potentially complex information will be confusing and detract from other pertinent information in respect of insurance cover, for example, policy terms and exclusions. This is particularly a concern given the issues of under insurance and low financial literacy in New Zealand. As such, disclosure must be meaningful and useful to the customer and strike a balance between ensuring they are informed but not

being so overwhelming that it acts as a deterrent to reading the important information or accessing insurance that suits their needs.

In addition, we do not consider it should be assumed that the public base their view of an insurer on regulatory disclosures. Matters such as brand reputation, ease of claims process and payment of claims are likely important attributes that help form a customer's view of an insurer. These matters form part of the wider communication and marketing of an insurer and are not conducive to being part of regulatory disclosure requirements.

We strongly encourage the RB to undertake comprehensive research and user experience testing with the public on how they form their view of insurers, what disclosures would be valuable to them and how they can be presented in way that customers can understand them.

Data and disclosure standard

If a data and disclosure standard were to be introduced, we consider further consultation is needed with insurers prior to data being requested. This would help ensure that data requests are interpreted consistently amongst insurers, are meaningful, and do not duplicate information that is already available through other reporting provided to regulators and industry bodies. This would also ensure that consideration can be given to what are reasonable timeframes for disclosure given insurers differ in the way they record and organise their data as there may be potential complexities in distilling the information to be provided.

At a minimum, a data and disclosure standard would need to be clear regarding what information can be requested from insurers. It should also be clear what information can be shared and with whom (for example, which other regulators or entities in New Zealand or overseas), the circumstances in which the information can be shared, and when the RB is obliged to inform an entity, their information will be shared. The standard would need to ensure there are appropriate protections in place to maintain confidentiality if the RB does share information.

IAG New Zealand submission

to the

Reserve Bank of New Zealand – Te Pūtea Matua

on the

IPSA Review: Options Paper 4
Governance, supervisory processes and disclosure

21 February 2023

1. Introduction

1.1 This submission is a response by IAG New Zealand Ltd (IAG, we) to the Reserve Bank of New Zealand - Te Pūtea Matua (RBNZ) on the Review of the Insurance (Prudential Supervision) Act 2021 ('IPSA'), Options Paper 4: Governance, supervisory processes and disclosure ('Options Paper').

1.2 IAG is New Zealand's leading general insurer. IAG employs over 3,500 people, insures more than 1.8 million New Zealanders and protect over $715 billion of commercial and domestic assets across New Zealand. We received around 461,000 claims in the last financial year and paid $1.7 billion to our customers in settling them, helping them get back on their feet following natural disasters, accidents, fires and other mishaps.

1.3 IAG's contacts for matters relating to this submission are:

s9(2)(a)

s9(2)(a)

2. Overarching comments

We welcome the opportunity to submit on this fourth Options Paper in the Review of the Insurance and Prudential Supervision Act (IPSA). We continue to appreciate the ongoing engagement and consultation on the review of IPSA, including the thoughtful consideration of issues through thematic consultations and the allowance of sufficient time for consideration and response to them.

The RBNZ has over recent years articulated its explicit intent to move from a light-handed regulatory posture to being a more active regulator. The shift to a more active regulatory posture is appropriate and may require new and amended regulatory tools. Some of the proposals in this Options Paper would represent specific aspects of this shift in approach. We note that combined with other proposals being considered in the IPSA Review, this could deliver a material change in overall regulatory approach and settings.

Care needs to be taken however that aspects of the individual proposals, and the overall scale of change, does not shift too far as otherwise it risks blurring responsibilities and creating an unnecessarily heavy-handed regime that makes operating as insurer in New Zealand more complex, less attractive and increasing the operating costs and ultimately customer premiums. Accordingly, proposed changes to the regime need to:

- Avoid moving too far from firm responsibility (i.e., self-discipline pillar) to regulatory involvement (regulatory-discipline) when it comes to the management of insurers.
- Avoid going beyond regulatory norms overseas, which could also intensify asymmetries in the treatment of overseas branches and locally incorporated insurers.
- Carefully evaluate and balance the impacts of individual proposed changes as well as the cumulative effect of all the potential changes for insurers and the RBNZ – so that the most beneficial changes can be pursued and the overall impact managed.

As an example of the careful calibration that is required, we have concerns that aspects of the proposed expansion of fit and proper requirements could shift the balance too far. These requirements for directors and relevant officers play an important role in the regime and we support these being strengthened to address identified issues or risks. It is important however to consider the scale of any issues or gaps under the current regime and weigh the benefits of increased requirements against the potential costs (including opportunity costs) for both regulated entities and the RBNZ. As outlined in section 3 of this submission, we support some strengthening of the fit and proper requirements but have concerns with introducing an ex-ante approval process, particularly if it was to be applied to a significantly wider group of executives.

We hope the feedback provided in this submission assists in further developing the proposals in the Options Paper and we look forward to the full suite of proposed changes to IPSA being consulted on later in 2023 as part of the planned omnibus consultation.

3. Responses to questions in the Options Paper

2.0 Governance, key officers and control functions

2.2 Fit and proper

Q 2.2.1 Should IPSA be amended so that a licensed insurer must obtain the Reserve Bank's approval prior to appointing a director or relevant officer? Would this create any difficulties for insurers?

We do not consider that IPSA should be amended so that a licensed insurer must obtain the RBNZ's approval prior to appointing a director or relevant officer.

Our view is that requiring ex-ante approval of all directors and relevant officers (potentially all senior managers as per Q 2.2.3) is unnecessary and would be a disproportionate change with clear issues and limited benefits given the wider regulatory context. Assuming the expectations for how entities should evaluate fitness and propriety are clear, and there is a duty to inform the regulator of cases where a persons is found not to be fit and proper (new proposal in Q 2.2.2), we consider this is a proportional and effective framework for entities to mitigate the risk that its officers and directors are not suitable.

Before turning to the implications of the proposed change we note that specific issues and policy problems related to the fit and proper requirements are not outlined in the Options Paper. This makes it more difficult to evaluate both the benefits of the proposed change and potential alternative approaches. Specifically, it would be useful to understand whether the concern is that insurers are appointing and certifying individuals who don't meet the requirements, or that there are senior managers outside the scope of the fit and proper regime that would not meet a fit and proper test and should be required to, or that insurers are not required to report and remove people swiftly enough.

Turning back to the specific proposal of ex-ante approval, we have the following specific comments in response to the proposal:

- Unless there is clear evidence of insurers certifying directors/relevant officers when they do not meet the fit and proper requirements, then adding an administrative step to require the regulator's approval/confirmation is going to add little value as they would simply duplicate the checks performed by the entity itself. While noting that there have been examples of prudential issues in practice, the relevant matter for this proposal (ex-ante approval) and whether it is worthwhile is whether the persons involved would not have been approved into those roles by the RBNZ under an ex-ante process, not how they performed once in them.
- While it is difficult to see what the RBNZ would do in addition to the checks performed by the insurer, there would be additional costs for insurers in making applications for all new directors and relevant mangers and then managing them.
- Requiring pre-approval would move appointments of director and relevant officers from the self-discipline pillar to the regulatory-discipline pillar, which is a material change and starts involving RBNZ in the management of insurers.
- Having 'approved' the appointment of directors and relevant management (whether 'relevant officers' or all senior managers) RBNZ could be potentially conflicted in its future supervisory role in regard to those persons because of that fact. The status-quo instead allows the RBNZ to be informed while still remaining

independent of appointments – with all responsibility for the appointment rightly falling on the insurer.

- There would be significant additional work for RBNZ in processing approval applications. We note there are 44 licensed deposit takers, but twice as many (88) licenced insurers and so adding insurers to an as yet not operational ex-ante approval regime for deposit takers, will impose significant further administrative work for the RBNZ, as well as for the regulated entities.
- RBNZ would need sufficient resources to swiftly process all the required applications as if not it will compromise insurers operations and ability to replace key personnel efficiently (particularly if the scope of relevant officers was expanded as per Q 2.2.3).
- Time and energy spent by insurers and RBNZ on processing ex-ante approvals will come at a potentially significant opportunity cost for the RBNZ in terms of its regulatory oversight effort.
- Persons looking to move between insurers in senior executive roles could be put in an awkward position if they were to remain in their existing/old role for a period of time while awaiting RBNZ's approval of their appointment into a new role with a different insurer. The scale of this issue would be relatively modest if only three (or four) management roles were to be subject to ex-ante approval, but would become much greater if all senior managers were subject to ex-ante approval.
- Consideration would also need to be given as to how restructures and role changes within a licensed entity are provided for so as to avoid unnecessary cost and complexity, while ensuring the policy intent is achieved. This would be a relatively modest issue if only the current three executive roles are subject to ex-ante approval but would become much greater if all senior managers were subject to ex-ante approval, as is separately proposed.
- It would accentuate the regulatory asymmetry/distortion between domestically incorporated insurers vs. overseas branch insurers in New Zealand. The extent of this would depend on how it was applied to branches, notification instead (as per clause 30 of the Deposit Takers Bill), simply continuing reliance on overseas regulators as currently (with exemptions granted to all overseas branches under section 38), or something more equivalent to the treatment of domestically incorporated insurers?
- The current process is consistent with IAIS ICP 5.3.2, which states "The supervisor may require the insurer to certify that it has conducted such assessments and demonstrate how it reached its conclusions."
- We also note the 2016/17 IMF FSAP of New Zealand did not recommend ex-ante approval of directors/relevant officers and that Australia does not require pre-approval.

If notwithstanding these issues the ex-ante approval process was to be introduced, then we consider it should be:

- limited to directors and current 'relevant officers' (i.e. CEO, CFO and Appointed Actuary) rather than to all "senior managers", because the relative relevance of prudential matters to other roles is relatively less but the costs associated with each

ex-ante approval remain constant and increase overall (see further response to Q 2.2.3 below); and

- grandfathering for existing position holders will be required (noting clause 26 of the Deposit Takers Bill).

Q 2.2.2 Should insurers have a duty to inform the Reserve Bank if they become aware of information that might reasonably cast doubt on a director or relevant officer's ongoing fit and proper status?

We agree that insurers should have a duty to inform the RBNZ if they become aware that a director or relevant officer no longer meets the fit and proper requirements. While at present Regulation 6 of the Insurance (Prudential Supervision) Regulations 2010 requires fit-and proper re-assessments of all directors and relevant officers at least every three years (if an individual is no longer considered fit-and-proper, the insurer is expected to take appropriate action), **also** requiring immediate action by an insurer is appropriate.

We consider that the test for notification should be higher and more definite than "might reasonably cast doubt", and should also make clear what action that should be taken by the insurer. IAG would support the adoption of language consistent with APRA Prudential Standard CPS 520 (Fit and Proper) as follows:

> **Paragraph 54**: "Where an APRA-regulated institution has assessed that a person is not fit and proper, or a reasonable person in the APRA-regulated institution's position would make that assessment, the APRA-regulated institution must take all steps it reasonably can to ensure that the person:
>
> - (a) is not appointed to; or
> - (b) for an existing responsible person, does not continue to hold, the responsible person position."
>
> **Paragraph 57**: "An APRA-regulated institution must notify APRA within 10 business days if it assesses that a responsible person is not fit and proper. If the person remains in the responsible person position, the notification must state the reason for this and the action that is being taken."

Q 2.2.3 Are there any reasons for, or against, extending fit and proper requirements to senior managers? Is 'managers that report directly to the chief executive officer' a useful way of delineating who should be captured as a 'senior manager'?

We do not consider based on the limited evidence provided in the Options Paper that a strong case has been made for extending fit and proper requirements to all senior managers (particularly if ex-ante approval) – with the current focus on directors, CEOs, CFOs and Appointed Actuaries remaining appropriate under a prudentially focussed regulatory regime. The only other role where we see a specific case could be made is that of Chief Risk Officer (CRO) or equivalent, given the scope of this role naturally includes prudential matters.

As discussed elsewhere in this submission, we note that the complexities associated with extending the scope of the fit and proper requirements increase materially if ex-ante approval of all such roles was also to be required.

We have the following specific feedback on the proposal to extend fit and proper requirements to all "senior managers":

- Prudential responsibilities are most strongly linked to the three current "relevant officer" roles, and arguably the CRO. Other direct reports to the CEO may have roles that while important to the functioning of the insurer do not involve responsibilities directly relevant to prudential oversight under IPSA (e.g., roles such as Chief People Officer, Head of Marketing and Branding, Head of Claims etc.).
- Extending fit and proper requirements to all senior managers (direct reports to CEO) would significantly increase the administrative costs of the regime. There are ongoing linear and cumulative costs to extending the approval to further roles (i.e., non-prudentially focussed roles) but diminishing returns from extending the regime beyond the current 'relevant persons' that are central to prudential issues.
- If ex-ante approval was also required and applied to all senior managers it would slow and complicate the recruitment of executives. This could impact the effective management of an entity and could also encourage different management structures (e.g., entities could limit the size of their executive teams in response, which may not otherwise be the best approach for the insurer).

2.3 Directors' accountabilities and duties

Q 2.3.1 Are current directors' duties under IPSA appropriate? Or is there a case for imposing wider duties, to reflect the potential impact of insurer distress on policyholders and the wider economy?

We agree there is a case for imposing wider duties, recognising that some other jurisdictions including Australia already have a wider set of duties. Please refer to our comments in response to Q 2.3.2 below on the potential nature of these duties.

Q 2.3.2 If there is a case for broader duties, which approach is more appropriate: the narrower approach proposed in the DTB, the extensive approach adopted in the UK/Australia, or some other approach?

Of the approaches discussed in the Options Paper we would support the narrower approach proposed in the Deposit Takers Bill. This would impose obligations on directors to exercise due diligence to ensure that the insurer complies with its prudential obligations, which would further strengthen existing directors' duties and seeks to promote good prudential governance.

We agree the extensive approaches adopted by jurisdictions such as Australia (BEAR/FAR) are complex and require significant resourcing for both the insurer and the regulator to implement and monitor.

We note that should New Zealand policymakers choose to implement a more extensive approach at some stage, it could be desirable to codify such requirements in a single act/standard to minimise potential duplication and conflicting requirements across legislation or standards.

Q 2.3.3 Are there any other considerations you would like to draw to our attention when thinking about director's duties?

Director duties need to be very carefully crafted so that directors have sufficient certainty that they are able to sensibly and effectively perform their roles.

Such duties must also avoid being so extensive or intrusive that they effectively require directors to take on a management role and focus on detailed day-to-day compliance. This could both take directors' focus away from where it should be and discourage people taking roles on boards of licensed insurers. We also note the risks of potential unintended consequences if excessively conservative positions are rationally adopted by directors as a consequence of due diligence obligations, potentially exaggerated if there is a lack of insurance cover for directors.

Care needs to be taken in applying civil penalties to directors personally so as not to unduly shrink the pool of quality governance people willing to serve as directors of licensed insurers. Particular care also needs to be taken with any proposals to limit indemnities and insurance in connection with liability for a breach of this duty.

If such a due diligence regime is introduced, IPSA should:

- Avoid conflating a director's role with that of day-to-day management.
- Include a materiality threshold in respect of, or clearly define, which prudential standards or their requirements warrant directors' time and attention.
- Articulate that a licensed insurer may consider the materiality of an obligation as well as the size of the business when considering what a 'reasonable director' might do.
- Include appropriate defences, noting that otherwise this may act as a deterrence for quality governance people to join the boards of licenced insurers.

As noted above in response to Q 2.3.3, where possible obligations should be codified in one place, rather than across various legislation and standards, to reduce duplication and ensure consistency in messaging and approach.

Q 2.3.4 Other than the duty to life policyholders established under the statutory fund regime, are there any other areas under the IPSA regime where directors or insurers should be obliged to consider policyholder interests or give priority to policyholder interests ahead of those of shareholders or members?

We have not identified any other specific areas under the IPSA regime equivalent to the duty to life policyholders established under the statutory fund regime.

2.4 The Appointed Actuary

Q 2.4.1 Would it be helpful for standards to:
(a) set out clearer expectations for the appointed actuary's role;
(b) set out the appointed actuary's place in the insurer's governance structures; and/or
(c) require insurers to explicitly consider resourcing needs for the appointed actuary role?

We don't consider there is uncertainty that creates the need for a standard/s in this area.

A standard in this area could be problematic, particularly if was overly prescriptive, as there are a range of different entity types, sizes and structures. There is also a risk that if a

standard was introduced and provided for a narrow scope of role and/or was otherwise highly prescriptive, this could make the Appointed Actuary role less attractive, with potentially adverse impacts on the attraction and retention of suitable actuaries.

If a standard/s was to be developed related to the Appointed Actuary's role, then it should outline clear principles rather than being prescriptive. This would ensure insurers of different nature/scale/structure can configure themselves appropriately, with each entity responsible for ensuring the competencies/seniority/supporting resourcing (e.g., framework for alternates in event of a crisis/absence) is appropriate. For example - principles would be appropriate in relation to governance structure (i.e., unfettered access to board and management) and this may influence where the Appointed Actuary is placed in the governance structure of an insurer, but organisations should be free to establish their own structures/reporting lines. We also note that how the proposed Actuarial Advice Framework would fit with the proposed standard is not outlined in the Options Paper.

Any standard/s developed in this area should also be consistent with existing sector practice and obligations in New Zealand, and with relevant practice and regulation in overseas jurisdictions.

Q 2.4.2 Would it be valuable to require insurers to have an actuarial advice framework in place under IPSA?

We agree that having an actuarial advice framework represents good practice and consider it would be valuable to require insurers to have this in place under IPSA. Based on IAG's experience of the equivalent Australian requirement, we consider that the approach there would be a good model to follow and the compliance burden of this would be manageable.

Q2.4.3 To what extent do you think that the Reserve Bank's power to remove an appointed actuary based on fit and proper requirements provides adequate incentives and sanctioning power, in light of the role that appointed actuaries play in the regulatory framework?

We agree the RBNZ's power to remove an Appointed Actuary based on fit and proper requirements is appropriate. We note this is broadly consistent with the approach in Australia, where there is an obligation on the entity under CPS 520 not to retain a person in the Appointed Actuary role if they are no longer fit and proper and where APRA has the power to ban an individual from holding an 'accountable person' position. We also note that beyond the regulatory situation, the entity also has the ability to apply internal consequences, for example clawback and non-vesting of awards.

Q2.4.4 Should the Reserve Bank impose a statutory duty on the appointed actuary to use due diligence to carry out their assigned role, enforceable with a civil pecuniary penalty?

We do not consider that IPSA should impose a statutory duty on the Appointed Actuary that is enforceable with a civil pecuniary penalty. We consider the current arrangements to be appropriate, noting:

- the existing measures already available under IPSA as discussed above in relation to Q 2.4.3; and
- that actuaries already have clear professional responsibilities through the New Zealand Society of Actuaries.

As noted above, careful consideration also needs to be given to the implications of such policy changes on individuals actuaries' willingness to take on the Appointed Actuary role for an insurer.

Q2.4.5 Should appointed actuaries have a duty to identify and present the interests of policyholders? If so, should that be a general duty or only one that applies in specific contexts (such as preparing the financial condition report?)

We do not support this proposed change and consider that retaining a focus on financial stability is more appropriate.

The interests of policyholders are often best realised through a focus on financial stability and taking the focus away from that could be problematic. Furthermore, the interests of different classes of policyholders can vary, which would create an issue as to which policyholders would have primacy where different interests are at conflict (i.e., policyholders with claims vs. without claims, prioritisation within claims made at different times or different locations). Such different cohorts of policyholders makes this a very complex matter and risks distracting the Appointed Actuary from a focus on solvency overall.

As discussed elsewhere in this submission, ongoing proposals of this kind to expand the regulated role of the Appointed Actuary (i.e., requiring commentary on outsourcing arrangements under the Interim Solvency Standard) risks turning the job of an Appointed Actuary into some sort of in-house regulator – both distracting focus and potentially making it a less attractive role. It would also be inconsistent with the general move to greater regulatory discipline.

2.5 The Auditor

Q2.5.1 Should IPSA include a provision requiring auditors to notify the Reserve Bank if they become aware that an insurer is failing to comply with its accounting and financial reporting obligations?

We consider it reasonable that IPSA include an appropriately crafted provision requiring auditors to notify the RBNZ if they become aware that an insurer is failing to comply with its accounting and financial reporting obligations.

2.6 Banning orders

Q 2.6.1 Should a serious and persistent breach of statutory due diligence duties (if they were introduced) be grounds on which a court might issue an industry-wide banning order?

Should statutory due diligence duties be introduced, then a serious and persistent breach of these by relevant persons would be a reasonable ground on which a court might issue an industry-wide banning order.

2.7 A governance standard

Q 2.7.1 Do you agree that it would be appropriate for IPSA to empower a governance standard?

We consider it would be appropriate for IPSA to empower a governance standard. We support the idea of a governance standard that blends principles-based rules with some prescriptive requirements, as described in paragraph 2.7.12 of the Options Paper.

Q 2.7.2 Can you suggest any principles that should guide the drafting of empowering provisions or the design of governance standards?

We suggest the RBNZ carefully considers APRA's Prudential Standard CPS 510 (Governance), noting that this is also to be subject of a review during 2023.

2.8 Risk management

Q 2.8.1 Do you think it is appropriate for IPSA to empower a risk management standard? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

We consider it is appropriate for IPSA to empower a risk management standard. Careful development and consultation would be required in the development of such as standard and we suggest that APRA's Prudential Standard CPS 220 (Risk Management) would be a good starting point.

Q 2.8.2 Do you think it is appropriate for IPSA to empower a standard requiring an ICAAP/ORSA process? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

We consider it would be appropriate for IPSA to empower a standard requiring an ICAAP/ORSA process. The matters considered in this are pivotal to the security of policyholders (stress testing etc.). IAG already undertakes an ICCAP pursuant to Australian requirements and we have found it to be a useful process.

Should this be introduced, to be effective and to maintain a consistent level of regulatory oversight it will be necessary for this to be applied to branches of overseas insurers.

3.0 Supervisory processes

3.1 Licensing

Q 3.1.1 Do you agree that it is appropriate for IPSA to contain a requirement for RBNZ to consult with the FMA, before the RBNZ issues or cancels an insurer licence issued under IPSA?

We consider that it would be appropriate for IPSA to contain a requirement for RBNZ to consult with the FMA before the RBNZ issues or cancels an insurer licence issued under IPSA. Given the RBNZ and FMA already engage on such matters, we agree explicitly providing for this in the legislation would enhance transparency. Providing more information on the process that is followed could further enhance this and provide greater certainty to industry participants.

We note that while all insurers are subject to the *Financial Markets Conduct Act 2013* (FMCA), not all insurers will be licensed under the new COFI regime when it comes into force as part

of the FMCA in 2025, as this new regime will only apply to those offering insurance to "consumers" (para 3.1.1 of the Options Paper appears to imply all insurers will be COFI licensed). We also note that some insurers such as IAG are also licensed by the FMA under the FMCA in relation to the provision of financial advice.

Notwithstanding that the COFI and financial advice regimes are not universal, we consider there is still logic in inter agency consultation in relation to insurers not licensed under them by the FMA, as they will still have New Zealand policyholders.

3.2 Approvals for restructuring

Q3.2.1 Do you agree with the proposal to consolidate the approval process for change of control, change of corporate form, transfers and amalgamations into a single test? Why?

We agree with the proposal to consolidate the approval process for change of control, changes of corporate form, transfers and amalgamations into a single test. Corporate changes can take a range of forms but for regulatory purposes the RBNZ is empowered to consider, it is the substance of the transaction that is material.

Q3.2.2 Do the proposed permissible considerations cover an appropriate range of considerations or are there other matters the Reserve Bank should be considering?

No comments.

Q3.2.3 Please identify any issues that you believe should be governed by a 'red line' prohibition – i.e. transactions that the Reserve Bank must not approve.

No comments.

Q3.2.4 Please identify any constraints that you think should be placed on the Reserve Bank's ability to attach conditions to its approval of a restructuring.

We would suggest that the conditions should be limited to those relevant to prudential regulation (i.e., those matters covered in section 21(2) of IPSA).

Q3.2.5 What do you consider to be the appropriate mechanism for setting out details of the approval process: primary legislation, secondary legislation (i.e. regulations), guidelines, or other?

We consider the details of the approval process should be set out in primary legislation. Clear rules in primary legislation will be important to provide certainty of process for insurers, and potential insurers and investors. Given the regulatory and commercial significance of the approval power we consider the use of primary legislation would be proportionate.

Q 3.2.6 How should the Reserve Bank balance market freedom with policyholder security in assessing restructuring transactions? Do you have any comments on wording that you think would capture this balance appropriately?

Of the potential approaches discussed in paragraph 3.2.33 of the Options Paper, we would recommend the "permissive approach" as this will provide the RBNZ with more flexibility in scaling any assessment to the specific matters at play and to take any matters that might be relevant into account, including likely consequences. We agree that a "mandatory

approach" would carry an increased risk of leading to adverse results, particularly in situations where an insurer was in financial distress.

In relation to the comments in paragraphs 3.2.28 to 3.2.30 of the Options Paper, we agree that the approval processes needs to strike a balance that prevents transactions from reducing the prudential soundness of the sector, while not unduly impairing the operation of markets for investment capital.

In this context, whilst it is clearly desirable for policyholders to not be adversely affected by restructuring – any principles need to contemplate situations where a change may have an adverse impact on policyholders in relative terms, but the restructured entity would nonetheless meet the requirements of the IPSA regime (i.e. it would seem illogical for the RBNZ to prevent a restructuring even though the restructured entity would remain compliant with the bar set by the IPSA regime, and may be at an equal or higher level of soundness to some other licensed insurers, albeit at a lower level than before). As noted below in response to Q 3.2.7, there may be a case for taking different approaches to different types of insurance given the implications for policyholders are quite different.

Q 3.2.7 Should the requirements to consider policyholder interests be different for statutory funds than for other restructuring transactions for which Reserve Bank approval is required?

We agree the nature of insurance business covered by statutory funds may justify different considerations and a potentially greater focus on policyholders' interests, given amongst other things their generally reduced ability to move between insurers.

Q3.2.8 Would it be helpful for Reserve Bank guidance on approval processes to say more about how we interpret the requirement to consider policyholder interests?

We consider the development of guidance on how the RBNZ intends to interpret the requirement to consider policyholder interests would be useful for industry participants and investors.

Q 3.2.9 Should approval processes include a requirement for us to consult with the FMA as part of our approval decision-making?

We consider that it would be appropriate to include a requirement for the RBNZ to consult with the FMA as part of our approval decision-making and agree that this would increase transparency. There would however need to be clarity on how the outcomes of this consultation were reflected in approval decision-making, and that this could not be used as a means for the RBNZ or FMA to apply considerations or conditions not provided for under the ISPA regime.

If there is an intention for the FMA to also have an approval power under legislation this should be specifically provided for in law. We note that MBIE engaged industry on this topic in 2021.

Q3.2.10 Do you agree that section 44 should be extended to apply to the acquisition of insurance business by a licensed insurer from a non-licensed overseas insurer?

We support this proposal in principle in the interests of consistency.

Q3.2.11 What do you think the appropriate threshold should be for a change of control to be notified to the Reserve Bank? Why?

We consider the appropriate threshold for a change of control to be notified to the RBNZ would be 50% voting rights, this being the threshold in IPSA currently and in the Deposit Takers Bill.

Q3.2.12 Please comment on the appropriateness of: (a) replacing the fixed 20 working day timeframe for approvals with a 'within a reasonable time' timeframe, or (b) extending that timeframe to 45 working days. Please provide any other comments or options you consider appropriate.

We recognise the challenges for insurers and the RBNZ with the current statutory timeframe in IPSA provided for approvals. We don't however support replacing the fixed 20 working day timeframe for approvals with either a 'within a reasonable time' timeframe, or simply extending that timeframe to 45 working days.

We note the inherent tension associated with provisions that require an approval to be processed by the RBNZ to a modest and fixed timeframe while recognising that transactions can vary greatly in terms of scale and complexity, and that the regulator reasonably requires all relevant information before it can make an informed decision. We also appreciate that the current timeframe (within 20 working days of receiving 'all of the information that is reasonably required') can both create unrealistic expectations for insurers and incentivises the regulator to continue asking for more information in order to reset the clock and give it more time to make a decision.

We don't however support replacing the current fixed 20 working day timeframe for approvals with a 'within a reasonable time' timeframe. This is too open ended and would provide no certainty for the sector and no targets or accountability for the regulator on the timing of its decision making. Simply extending 20 working days to 45 working days would give the regulator more time for more complex approvals but would represent a significant period for simpler ones, could lead to very long periods if more information requests are made, and does not resolve other issues with the current approach.

We therefore suggest an alternative could be to make the statutory timeframe "as soon as reasonably practicable but not longer than [45] Working Days", which would suggest the need for haste in processing approvals while providing a longer defined period for more complex approvals to be considered. This should then also be complemented by:

- a statutory requirement for the RBNZ to notify the applicant within a relatively short period (e.g. 10 working days) as to whether any additional information would be required – which would require rapid triaging of applications and provide more timeline certainty to applicants; and
- a written outline by the RBNZ of expected timeframes for processing approvals (in guidance, as part of its key performance measures or otherwise), with the maximum statutory period being reserved only for the most complex approvals and the RBNZ committing to other targets such as 20 working days or less for simpler approvals.

We also note that providing specific guidance on information requirements for entities making applications could help to improve initial approval applications and generally streamline the process.

4 Data and disclosure

4.2 A data and disclosure standard

Q4.2.1 Should IPSA empower a data and disclosure standard that could set out disclosure requirements, including data that should be made available to the public?

We consider the substance and scope of data and disclosure requirements should be provided for in legislation, with the detail provided through a standard. Legislative provisions need to be very clear as to the purpose for which information is collected and whether it is to be used for specific regulatory processes and/or for public disclosure.

In developing the legislative provisions and potentially subsequently the detailed standards, RBNZ will need to engage closely with insurers to ensure that data sought can be provided by insurers in a straightforward manner and without undue expense (e.g., it already exists) and ensuring the data sought, and if relevant disclosed publicly, will deliver value and not be anti-competitive etc.

We consider that if this proposal is to be progressed further, the final planned omnibus consultation should contain the substance of the proposal/s.

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IPSA REVIEW – GOVERNANCE, SUPERVISORY PROCESSES, AND DISCLOSURE

INTRODUCTION

ICNZ welcomes the opportunity to participate in this fourth round of consultation in the Reserve Bank of New Zealand's (RBNZ) review of the Insurance (Prudential Supervision) Act (IPSA).

The key themes arising from this submission are:

- There is a sense that some proposals in the Options Paper are solutions looking for problems (for which the RBNZ has provided no evidence of existing).
- There is a need to apply a proportional response to evidence-based problems and this response should be applied in an efficient manner.
- With the proposals, the RBNZ risks confusing its supervisory role with that of company management and the board.
- ICNZ proposes that the RBNZ issue more explicit guidance on key officer appointments and the fit and proper criteria, which would help inform boards and management when recruiting and appointing. This guidance could be issued to those seeking election to Boards by shareholders and it would better inform boards (who must remain accountable for oversight of their respective company).

Before answering the specific questions in the consultation paper, we have some general points to make about branches of overseas insurers and the fit and proper regime.

Branches of overseas insurers

There is an overarching question regarding the application of any changes to the Fit and Proper process to overseas insurers and how RBNZ intends to deal with APRA-regulated[1] entities operating branches in Aotearoa New Zealand. In relation to the proposals for pre-approval is the intent that the requirement will be only notification (as per clause 30 of the Deposit Takers Bill), or would it simply be continued reliance on overseas regulators as currently done (with exemptions granted to all overseas branches under section 36)?

Throughout the document, there is reference to APRA regulation as a comparison to what the IPSA review is looking to address. Australia does not require pre-approval of directors/officers so there is no argument that the proposed change is necessary to bring Aotearoa into alignment with Australia. The question arises, would this mean maintaining status quo from a branch perspective despite a material shift in approach for domestically incorporated insurers, or would there be a need to provide evidence of adherence to APRA standards?

[1] Australian Prudential Regulation Authority (APRA).

This uncertainty recalls comments ICNZ made in its submission in 2021 on the *IPSA Options Paper on Scope and Overseas Insurers*. In that we noted the need for an even playing field

> "… emphasising competitive neutrality[2], regulatory transparency and consistency, avoiding undue reliance [on] overseas regulations and supervision, while also not imposing undue barriers to entry, duplication in regulatory regimes, unnecessary compliance costs, or making the sector so unattractive that a business chooses not to participate in it, noting the desirability of encouraging overseas insurers and reinsurers to participate in the New Zealand insurance market (including increasing competition, innovation, expanding capacity, providing greater options for consumers and facilitating the pooling and diversification of risk globally)".

We look forward to the omnibus IPSA consultation from RBNZ later in 2023 to provide clarity on the intersection between fit and proper requirements and the treatment of overseas branches and insurers.

Fit and Proper Requirements

ICNZ and its Members support appropriately robust Fit and Proper Requirements, but it is important to consider the scale of any issues or gaps under the current regime and then weigh the benefits of increased requirements against the potential costs (including opportunity costs) for insurer entities and the RBNZ itself.

The specific issues and policy problems leading to proposals to change fit and proper requirements are not clearly outlined in the consultation paper. For example, are there concerns that insurers are appointing and certifying individuals as being "fit and proper" who in fact do not meet the requirements? Are there senior manager roles outside the current scope of the fit and proper regime that would not meet a fit and proper test and that should be required to do so? Are insurers not required to report and remove people swiftly enough?

Are there examples that would illuminate deficiencies in current approaches, are they material enough to underpin the proposed policy response (and associated costs), and can they be shared (assuming the need for anonymisation of any specific examples)? Or are there any common themes that give rise to concerns?

Prior approval pitfalls

Given the absence of evidence of issues that have arisen with current directors and management, the proportionality and cost benefit of moving to prior approval, particularly of all senior managers, is not clear. There have been a few prudential issues with insurance practice in New Zealand[3], but the most relevant concern for the prior approval proposal is whether the persons involved would not have been approved by the RBNZ under a prior approval fit and proper process, not how they performed once in them.

Are there checks additional to those conducted by the insurer that the RBNZ would do, and what would these be? There would be additional costs for insurers in making applications for all new directors and relevant mangers and then managing this process as the RBNZ undertook its own assessment of applications. Additional context on the negative implications for insurers is included in our responses below.

Requiring pre-approval would move appointments from the "market discipline" pillar to the "regulatory discipline". As well, having 'approved' the appointment of directors and relevant management (whether 'relevant officers' or all senior managers) RBNZ would be potentially conflicted in its future supervisory role of those persons because of the fact of its involvement in those appointments.

The status-quo instead allows the RBNZ to be informed while remaining independent of appointments, with all responsibility for the appointment rightly falling on the insurer (subject to satisfaction of the fit and proper requirements).

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[2] This involves ensuring there is no material difference in regulations (including obligations and other requirements, protections/options for redress, or compliance costs between different market participants), with domestic and overseas insurers being treated consistently and held to the same regulatory standard as much as is possible. Viewed in this light, exemptions for overseas insurers, for example, should not put domestic insurers at a competitive disadvantage.

[3] The most obvious being the liquidation of CBL Insurance in 2018.

There would be significant additional work for RBNZ in processing applications. There are only 44 deposit takers (27 licensed banks and 17 NBDTs[4]), but twice as many (88) licensed insurers. Adding this tranche of insurers to a yet to be implemented ex-ante approval regime for deposit takers will impose significant further administrative work for the RBNZ.

It is assumed existing people in roles would be grandfathered, as we believe that this would create a large administrative burden and uncertainty if this was not the case. If an ex-ante approval requirement is introduced, ICNZ recommends that it only applies to appointments made after the commencement or effective date of those amendments. There would be a very significant cost and administrative burden in the event the industry is required to retrospectively complete the process for individuals already in relevant roles.

RBNZ would need sufficient resources to swiftly process all the required applications; if it is not able to do this, it will compromise insurers' operations and ability to replace key personnel. Time and energy spent by insurers and RBNZ on processing ex-ante approvals will come at a potentially significant opportunity cost for the RBNZ in terms of its regulatory oversight effort.

QUESTIONS FROM THE OPTIONS PAPER

2.2.1 – *Should IPSA be amended so that a licensed insurer must obtain the Reserve Bank's approval prior to appointing a director or relevant officer? Would this create any difficulties for insurers?*

IPSA should not be amended to require a licensed insurer to obtain RBNZ approval prior to appointing a director or relevant officer. We consider this would go beyond common practice and what is required by the IAIS ICPs[5]. Established governance law and practice places the primary responsibility for ensuring that directors have the necessary skills, qualifications, and expertise with the Board and its Chair[6]. The Board should approve the appointment of relevant officers and it should be sufficient for regulatory purposes for there to be documented processes showing compliance with any fit and proper requirements set by legislation or the organisation's constitution.

In practice, requiring prior approval will add an administrative burden for insurers and potentially lead to delays in appointments, noting in particular that not all directors might be domiciled in New Zealand. Requiring ex-ante approval of all an insurer's directors and relevant officers (or all senior managers) would be a disproportionate change with limited identifiable benefits and very clear costs. A further administrative step to require the regulator's approval would simply duplicate the checks performed by the entity itself.

As well, an insurer with a constitution requiring the election of directors would need the Reserve Bank to approve a slate of director candidates prior to the election. For some insurers that would be onerous, given the number of candidates some elections attract (particularly for membership-based organisations) and the timeframes[7] within constitutions that need to be followed. We do not consider that it would be practicable for insurers to seek Reserve Bank approval following the election of a director. If that were the case, we expect that many, if not most, insurers would have to amend their constitution to allow for the possibility of the Reserve Bank *not* approving an elected candidate.

That said, this assumes that the use of the word "appoint" means that the Reserve Bank intends to include other methods by which a person can become a director. If not, and the Reserve Bank intends that the requirement be limited only to *appointed* directors (as appears to be the case under the Deposit Takers Act), then the above feedback is not relevant. In any event, the primary objection remains that the approval of appointments should sit with the Board.

It is not clear that the RBNZ has evidence of insurers certifying directors or relevant officers when those people do not meet the fit and proper requirements that currently exist. The consultation paper is not explicit about the basis

[4] Non-Bank Deposit Takers.
[5] International Association of Insurance Supervisors; Insurance Core Principles.
[6] The Board and Chair will be acting within parameters set by legislation, such as the Companies Act 1993, and constitutional documents of the organisation approved by shareholders (or similar).
[7] These timeframes would include making calls for nominations, notifying members of the list of candidates, publishing agenda and notices of meeting, and organising on-line or mail-in voting processes.

on which the RBNZ will approve prospective directors (but it is presumably based on the Fit and Proper Standard). Any amendment to IPSA should be clear about these expectations and criteria, including whether an insurer's own fit and proper policies are relevant to the decision-making process.

Assuming there are clear expectations for how an entity tests for fitness and propriety, and there is adequate monitoring[8] by the regulator, this should provide a reasonable framework for the entity to mitigate the risk that its officers and directors are not fit and proper.

To do otherwise may blur the lines between regulator and insurers and potentially subject the RBNZ to criticism of regulatory overreach into the operational management of insurers. As Bank officials noted in the webinar on 27 January 2023 to explain this proposal, the RBNZ is not a 'second line of HR' for insurers.

If the decision is made to require RBNZ's prior approval, the following matters would need to be addressed:

- What are the Bank's specific concerns with the current process under IPSA and would prior approval of appointments address these?
- What level of accountability is RBNZ willing to take for the approval of directors and relevant officers that ultimately may prove not to be fit and proper? Would RBNZ seek to outsource any of the assessment activities to a third party?
    - What responsibility does the RBNZ hold where the decisions of a relevant director/officer approved by the RBNZ have caused harm to third parties, who then seek damages and recompense from the officer, the insurer, and potentially the RBNZ as approver?
    - Has the RBNZ considered the employment law implications for the Bank in being a part of an appointment process for relevant officers who are employees of the insurer?
- Assuming the RBNZ has provided clear guidance on its expectations for candidates to meet fit and proper criteria, what grounds would lead the RBNZ to decline approval of a director or relevant officer (and would the grounds for declinature be documented and shared with the insurer and/or the individual)? Also, would there be a right of appeal?
    - The Bank will need to provide very clear guidance on these grounds, which would themselves need to be serious to justify the exercise of such an intervention.
- Will the Reserve Bank consider factors such as Board composition when giving approval? Board appointments will usually be made in line with an organisation's strategy and an assessment of skills or background diversity needed for the Board at that time to implement its strategy. These will differ from one organisation to another.
- Short and clear timeframes would need to be specified for the RBNZ to respond to a request for approval to ensure that an insurer can appoint a director or relevant officer to a role with confidence in a timely manner, so as to avoid adverse impacts on the operation of insurers that could result from delays in filling key roles:
    - This is especially important when the appointment is needed for succession and continuity.
    - Any process would need to allow for interim key officer appointments to deal with unplanned vacancies or resignations.
- Any prior approval should be:
    - limited to directors and current 'relevant officers' (i.e. CEO, CFO and AA) rather than to all "senior managers" because the relevance of prudential matters to other roles is relatively less but the costs associated with each ex-ante approval remain constant and increase overall on a cumulative basis (see further response to Q 2.2.3 below); and
    - grandfathering for existing position holders will be required (i.e., only applies to "new" people as per Deposit Takers Bill clause 26).

[8] "Monitoring" should mean a process by which the RBNZ can be shown proof that appropriate steps were taken to assess a candidate against relevant "fit and proper" criteria, but it cannot mean that an appointment process is held up while RBNZ undertakes its own assessment of a candidate.

Q2.2.2 – Should insurers have a duty to inform the Reserve Bank if they become aware of information that might reasonably cast doubt on a director or relevant officer's ongoing fit and proper status?

We do not support this proposal with its current wording. Informing the RBNZ of "information that might reasonably cast doubt" is vague and broad and would leave insurers in an uncertain position. There are also serious questions to be considered regarding the impact of this proposal on the employment law obligations on insurers not to create disadvantageous working conditions or expose insurers to defamation (or similar) claims.

The consultation paper refers to the Deposit Takers Bill, but we find the wording in clause 32 of the Bill to still lack clarity. It says that notice must be made when an organisation "reasonably form[s] the opinion that a director or senior manager of the deposit taker is not, or is not likely to be, a fit and proper person to hold the relevant position". The practicalities of dealing with such wording and implications from making such an assessment can be problematic.

At present, regulation 6 of the Insurance (Prudential Supervision) Regulations 2010 requires fit-and proper re-assessments of all directors and relevant officers at least every three years. If an individual is no longer considered fit-and-proper, the insurer is expected to take appropriate action). So the proposal requiring immediate action by an insurer if it becomes aware of issues affecting ongoing fit and proper status is appropriate, but the existing wording in current insurer fit and proper policies, aligned with the IPSA Fit and Proper Policy Guidelines, is adequate[9].

The onus should remain with the Board to assess whether a person is fit and proper and the requirement should be to notify RBNZ if the person is no longer considered fit and proper to hold office. That is, the insurer must be able to undertake internal investigations and assessments and provide the director or relevant officer with the rights under natural justice to respond to any allegations of failure to meet fit and proper standards[10]. Notifying of information that simply "casts doubt" would also hinder the ability of an insurer to support the officer through remedial steps[11] to ameliorate any deterioration in fit and proper standing.

Following internal investigation, should the insurer decide that an individual is no longer fit and proper, then it may be appropriate to require the insurer to notify the RBNZ within 20 working days. We note the consultation paper references the APRA approach and it might be useful to consider the wording used there as it provides clearer criteria and a more definitive process.

The APRA Prudential Standard CPS520 Fit & Proper notes as follows:

- Paragraph 54
    - *Where an APRA-regulated institution has assessed that a person is not fit and proper, or a reasonable person in the APRA-regulated institution's position would make that assessment, the APRA-regulated institution must take all steps it reasonably can to ensure that the person:*

      (a) is not appointed to; or

      (b) for an existing responsible person, does not continue to hold, the responsible person position.
- Paragraph 57
    - *An APRA-regulated institution must notify APRA within 10 business days if it assesses that a responsible person is not fit and proper. If the person remains in the responsible person position, the notification must state the reason for this and the action that is being taken.*

If this duty were introduced, then it would need to be clear what the process would be following the provision of information by an insurer to the RBNZ. As we have said, we consider the proposed duty is fraught with difficulty unless clearly defined and uncertainty and could result in over-reporting to RBNZ. If not clearly defined, it carries

[9] Particularly if those fit and proper standards are clear and comprehensive.

[10] It must be remembered that these are well-qualified human beings with careers and reputations and livelihoods at stake. Where an organisation becomes concerned about their performance or fitness for duty, they are entitled to 1) know of that concern and 2) be given an opportunity to explain and/or fix the issue.

[11] The RBNZ has stated that it is not seeking to step into the HR function of organisations; however, requiring notification before an organisation has been able to implement performance management and remedial actions threatens to insert the RBNZ directly into HR functions.

with it the risk of inappropriate reputation damage for directors and officers based on unfounded grounds[12] and, conversely, could potentially expose the insurer to civil claims.

Further, if the RBNZ introduces the prior approval of the appointment of directors and relevant officers (which we do not support) then it needs to be clear whether the RBNZ or the insurer is making the final determination on whether an individual is still fit and proper.

Q2.2.3 - *Are there any reasons for, or against, extending fit and proper requirements to senior managers? Is 'managers that report directly to the chief executive officer' a useful way of delineating who should be captured as a 'senior manager'?*

We do not consider that the limited evidence provided in the consultation paper makes a strong case for extending fit and proper requirements to all senior managers[13]. The current focus on directors, chief executives, chief financial officers, and appointed actuaries remains appropriate.

Introducing fit and proper requirements to senior managers might lead to marginal benefit in terms of increased oversight by the RBNZ over the vetting of senior employees at insurers. However, that will also come with increased compliance costs, particularly if the requirement is not clear – or is somewhat subjective – as to the definition of "senior manager".

The definition "managers that report directly to the chief executive officer" is too broad. For many insurers, it would capture roles which are not properly concerned with prudential supervision. Prudential responsibilities are most strongly linked to the three current 'relevant officer' roles and some direct reports to the CEO may have roles/responsibilities with little relevance to prudential oversight.

Furthermore, capturing "managers that report directly to the chief executive officer" will likely capture some professional roles that are already subject to regulatory supervision of fit and proper requirements by their respective industry bodies (such as General Counsel).

To avoid confusion, the term 'senior manager' should not be used in IPSA. The term 'senior manager' is already used in the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the Financial Markets Conduct Act 2013 and has a different definition, being: "in relation to a person (A), means a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of A (for example, a chief executive or a chief financial officer)".

Any extension of fit and proper requirements should only be to roles that have the ability to materially affect the whole or a substantial part of the business of the company or its financial standing. In this regard we consider that could potentially be the Chief Risk Officer or equivalent.

Should the RBNZ introduce prior approval requirements and to be informed of the ongoing fit and proper status of relevant individuals, then extending the fit and proper requirements to several additional roles would create an administrative burden for both RBNZ and insurers without a clear benefit. Extending fit and proper requirements to all senior managers (direct reports to the CEO) would significantly increase the scope of administrative costs of the regime whilst diluting the focus on prudential matters. There are ongoing linear costs to extending the approval to further roles (including non-prudentially focussed roles) but diminishing returns from extending the regime beyond the current 'relevant persons' that are central to prudential issues, also moving any assessment further away from RBNZ's areas of responsibility and expertise.

It could also incentivise insurers to restructure the senior management team to minimise the number of roles reporting to the chief executive officer to escape the regulatory burden. Requiring ex-ante approval will slow recruitment of executives and thus a natural response from entities could be to limit the size of management teams, which may however not be the best approach for licensed entities.

Consideration also needs to be given to how restructures and role changes within a licensed entity are handled, to avoid unnecessary cost and complexity while ensuring the policy intent is achieved. This is a more modest issue if

[12] As currently framed, information that "reasonably casts doubt" could be found, after investigation, not to cast doubt yet a notification has been made. Is that notification discoverable under the Official Information Act? What impact has there been on the director or employee while that "doubt" is examined?

[13] This is especially considering the proposal to introduce prior approval requirements for these positions.

only three roles are subject to ex-ante approval but would become much bigger if all senior managers were subject to ex-ante approval.

From the employee's point of view, people looking to move between insurers in senior roles are put in an awkward position if they remain in their existing role for a period of time while awaiting RBNZ's approval of their appointment into a new role with a different insurer. This is a relatively small issue if only three management roles are subject to ex-ante approval but would also involve a lot more people if all senior managers were subject to ex-ante approval.

Q2.3.1 - Are current directors' duties under IPSA appropriate? Or is there a case for imposing wider duties, to reflect the potential impact of insurer distress on policyholders and the wider economy?

We consider the current directors' duties under IPSA are appropriate and there is not a case for imposing wider duties. Directors already have notable and wide-ranging responsibilities and duties under the various New Zealand regulatory and industry frameworks in which they operate. Key examples are the requirements prescribed by the NZX Listing Rules and associated Corporate Governance Code, and legislation such as the Companies Act 1993 and the pending requirements under the Companies (Directors Duties) Amendment Bill.

Although directors' duties under IPSA itself are limited, they are nonetheless appropriate. The existing liability provisions – section 216, in particular – indirectly introduce a duty to ensure that the licensed insurer complies with its obligations under IPSA. As noted in the consultation paper[14], a director can be liable for an offence under IPSA if the licensed insurer breaches a relevant obligation and the director allowed the offence to occur or knew (or should have known) that the offence was being committed and failed to take reasonable steps to prevent it.

There is a concern that directors will be driven to focus on the minutiae of detailed compliance requirements rather than on matters requiring board governance oversight. Imposing such wider duties might unreasonably deter talented candidates from taking on directorships (particularly if there are to be limitations on the indemnities and insurances available to directors) and might have the effect of encouraging insurers to establish unnecessarily conservative risk settings to avoid the possibility of personal liability.

The effect of section 216 is to introduce an incentive for directors to have sufficient understanding and oversight of the insurers' affairs to avoid liability in the event of a breach by the insurer.

Accordingly, there is no need to impose additional duties beyond what exist in IPSA already.

See further comments on Question 2.3.2 below.

Q2.3.2 - If there is a case for broader duties, which approach is more appropriate: the narrower approach proposed in the DTA, the extensive approach adopted in the UK/Australia, or some other approach?

Notwithstanding our view expressed in Question 2.3.1, were further duties to be imposed we consider the narrower approach (consistent with the DTA) would be more appropriate. There is no obvious rationale why insurers would differ from deposit takers in this regard.

The "due diligence" duty like that in the Deposit Takers Act is most appropriate. There is no basis for directors of insurers to be subject to more onerous obligations than the directors of banks and other deposit takers. The proposed obligation on directors to exercise due diligence to ensure that the insurer complies with its prudential obligations could further strengthen existing directors' duties and seeks to promote good prudential governance.

The extensive approach adopted by jurisdictions such as Australia (BEAR/FAR) is complex and requires significant resourcing for both the insurer and the regulator to implement and monitor. In contrast, we suspect that the directors of most insurers will likely already take steps to comply with the "narrower" approach.

We note the example of mutual or other "member based" insurers, where policyholders are shareholders. For those organisational structures, the imperative is to ensure the sustainability of the business, so it continues to exist for members. Accordingly, compliance with prudential obligations is aligned with the imperatives faced by member-based organisation directors.

[14] Paragraph 2.3.5.

We recommend that the Reserve Bank release guidance as to how it expects directors to comply with the obligation, given the high-level nature of the proposed statutory obligation (if it is to be modelled on section 92 of the Deposit Takers' Act).

Note: should the RBNZ choose to implement a more extensive approach at some stage, then it should look to codify requirements in a single act/standard to minimise potential duplication and conflicting requirements across acts or standards. Given the potential scope of any such regime would not apply to just insurers, we think it would be more appropriately considered separately from IPSA (noting also that it was not part of the review of prudential regulation of deposit takers).

Q2.3.4 - Other than the duty to life policyholders established under the statutory fund regime, are there any other areas under the IPSA regime where directors or insurers should be obliged to consider policyholder interests or give priority to policyholder interests ahead of those of shareholders or members?

We have not identified any areas that are not already covered under existing legislation.

In our view, directors are already very mindful of policyholder interests, particularly considering the increasing focus on conduct. We do not believe that there is an identified problem that the creation of a duty would solve.

We also noted that, as implied in the consultation paper, the purpose of IPSA and the suite of prudential obligations it imposes on insurers is fundamentally about protecting policyholder interests. Introducing additional obligations to consider policyholder interests is therefore unnecessary and likely to be the reason that there does not appear to be any other jurisdiction in which such a duty has been imposed on directors[15].

The question, and discussion in the consultation paper, assumes that there will always be a conflict between the interests of policyholders and shareholders (or members). In relation to the question posed in paragraph 2.3.19, we consider that an indirect duty is adequate and that introducing a specific obligation to consider policyholder interests risks introducing complexity and ambiguity and being unworkable. This includes that policyholders will not all have uniform interests, even when viewed at a collective level.

Q2.4.1 – The Appointed Actuary

Would it be helpful for standards to:

(a) ***set out clearer expectations for the appointed actuary's role;***

(b) ***set out the appointed actuary's place in the insurer's governance structures; and/or***

(c) ***require insurers to explicitly consider resourcing needs for the appointed actuary role?***

We consider that the existing requirements of the Appointed Actuary role are robust and indeed may be above what is required in other global environments (with the possible exception of Australia). The Appointed Actuary role currently has significant oversight functions within insurers. Adding more responsibilities would seem to transfer some of the oversight functions of the RBNZ onto Appointed Actuaries and we question if this is appropriate.

At this time, we do not see any uncertainty that creates the need for an instrument as formal as a standard. There is danger in a standard being prescriptive as to how the Appointed Actuary must "fit" into insurers' governance structures. Governance structures will differ insurer to insurer, and a prescriptive standard to that effect risks being inconsistent with certain insurer's governance structures, and therefore unworkable. To avoid that, the standard would need to either be very general, or tailored for each insurer, which would not be practical.

Clearer expectations are always welcome to assist insurers and, while guidance is welcome on the Appointed Actuary's role and place in governance structure, the specific arrangements employed are ultimately more appropriate for the insurer to determine rather than the RBNZ.

[15] Ref paragraph 2.3.18.

Guidance (and more so a standard) that is too narrow or prescriptive could impact the attraction and retention of Appointed Actuaries as the role may become unattractive due to, for example, it being limited in scope, which is problematic in the very tight New Zealand market.

Regarding fit and proper requirements, it would be helpful for more guidance on fit and proper requirements for interim Appointed Actuaries and requirements if that interim Appointed Actuary is made permanent.

It is also not clear from the consultation paper how the Actuarial advice framework would fit with the proposed standard. If a standard was to be developed, then it should:

- Outline clear principles rather than being prescriptive so that insurers of different nature/scale/structure can configure themselves appropriately.
- Allow each entity to ensure the competencies/seniority/supporting resourcing (including framework for alternates in event of a crisis/absence) is appropriate.
- Be consistent with existing sector practice and obligations in New Zealand and in relevant overseas jurisdictions (noting that Australia and the UK are not comparable with New Zealand in respect of actuarial resourcing and practices).

RBNZ would need to work with the NZ Society of Actuaries to ensure that professional and regulatory requirements are coordinated and aligned. Any requirement that insurers explicitly consider resourcing needs for the Appointed Actuary role would need to be clear about

a) when that consideration needs to take place,

b) how the consideration is evidenced, and

c) the factors relevant to that consideration.

It is difficult to comment further without more detail about the proposed requirement.

Q2.4.2 - Would it be valuable to require insurers to have an actuarial advice framework in place under IPSA?

Yes, having an actuarial advice framework (AAF) in Aotearoa New Zealand is a step in the right direction and an important risk mitigating measure. Clearer expectations are always welcome to assist insurers; however, the RBNZ must be mindful of whether a framework might create undue compliance and administrative burdens on actuarial activities and responsibilities. It should go without saying that RBNZ would need to work with insurers to ensure the cost of maintaining and adhering to such a framework does not outweigh the benefits.

That said, an AAF would be better than introducing a standard. The AAF could provide clarity and be appropriate, so long as it also provides flexibility and does not inhibit the Appointed Actuary from be involved in other areas of the business where they add value. The responsibilities and duties outlined in the proposed AAF are realistically performed by actuaries currently, within the management and governance structures of the insurer.

We note that Australia already requires this type of framework.

Q2.4.3 - To what extent do you think that the Reserve Bank's power to remove an appointed actuary based on fit and proper requirements provides adequate incentives and sanctioning power, in light of the role that appointed actuaries play in the regulatory framework?

We consider this provides adequate incentives and sanctioning power. The ability to remove the Appointed Actuary is consistent with the approach taken under FAR in Australia where APRA has the power to ban an individual holding an 'accountable person' position. The insurer also can apply internal consequences (such as clawback and non-vesting of awards).

Being removed as an Appointed Actuary based on fit and proper requirements would have severe implications for the future career opportunities for an appointed actuary.

In our view, the professional obligations imposed on Appointed Actuaries, along with the RBNZ's power to remove an Appointed Actuary based on fit and proper requirements, provides sufficient incentive for Appointed Actuaries to discharge their obligations competently and professionally. If the Fit and Proper Standard were modified to

incorporate reference to the proposed actuarial advice standard, then that coupled with the Reserve Bank's power to remove an Appointed Actuary that did not meet the Standard would provide sufficient sanctioning power for the Reserve Bank.

Q2.4.4 - Should the Reserve Bank impose a statutory duty on the appointed actuary to use due diligence to carry out their assigned role, enforceable with a civil pecuniary penalty?

We question whether a statutory duty is necessary given actuaries are subject to professional standards, a code of conduct and disciplinary scheme, and actuarial information is subject to external audit (for example, information contained in the financial statements and Insurance Solvency Returns). As noted in the consultation paper, the role of an Appointed Actuary is to act as an impartial expert. Ultimate responsibility for the decision-making of a licensed insurer rests with senior management and the Board. Given that, while it is appropriate for directors to face liability under IPSA, it seems disproportionate and potentially out of step with the nature of the role for the Appointed Actuary to face similar liability.

There is also a question of how this duty would work if the Appointed Actuary's recommendation was overridden by the Board?

We note there is also already an insufficient pool of suitable candidates for appointed actuary roles and increased compliance costs is likely to reduce this further. A statutory liability regime for Appointed Actuaries would inevitably make the role less attractive, making it more difficult to attract people with the appropriate skills and experience. Because we think that the current regime (with a new actuarial advice standard) is sufficiently robust, in our view it's not worth running that risk.

Q2.4.5 - Should appointed actuaries have a duty to identify and present the interests of policyholders? If so, should that be a general duty or only one that applies in specific contexts (such as preparing the financial condition report?)

While the interests of policyholders are intrinsically linked to the prudent management of an insurer, it is important to avoid introducing new duties that unduly complicate the role being performed by Appointed Actuaries. Again, we must ask what is the identified problem that the creation of a general duty would solve?

We also note the interests of different classes of policyholders can be different[16], which would create an issue as to which policyholders would have primacy where different interests are at conflict (such as, policyholders with claims vs without claims, prioritisation within claims made at different times, etc). The interests of benefits of the policyholders are often best realised through a focus on financial stability and diluting that focus could be problematic.

The Appointed Actuary role is already concerned with providing assurance that the insurer in question is solvent and is meeting its prudential obligations. As such, retaining a focus on financial stability is more appropriate. Policyholder considerations might be appropriate in specific contexts[17], but increasing expansion of duties and obligations for the Appointed Actuary runs the risk of transforming the role of an Appointed Actuary into an in-house regulator (potentially making it a less attractive role).

At this stage, it is difficult to comment in detail on this question because the consultation paper is not clear about what are the "interests of policyholders", that would inform the content of such a duty. Further:

- It is not clear what is meant by "identify and present" the interests of policyholders and this may potentially be broader than the remit of the Appointed Actuary and would be more suited to a customer advocacy type role[18];

[16] We note the RBNZ Thematic Review of the Appointed Actuary from 2020, in which insurers told the RBNZ that it "should clearly articulate what [it] mean[s] by 'policyholder interests'. There were a few concerns about the risk of widening the role of the Appointed Actuary too much outside their skillset (seen as more quantitative and statutory)". Page 20 - https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/news/2020/appointed-actuary-thematic-review.pdf?sc_lang=en

[17] For example, FCRQ2.5.1, where the audit opinion by the auditors should be sufficient to provide notice if an insurer is failing to comply with its accounting and financial reporting obligations. Also, portfolio transfers, mergers, and acquisitions.

[18] There is a clear question here of how such a duty, with a clear narrow focus on prudential matters and financial stability, would reconcile with the FMA's CoFI regime seeking fair outcomes for the customer.

- Whether any such duty should be general or specific would depend on what is meant by "identify and present the interests of policyholders";
- The responsibility for wider "interests of policyholders" sits with a wide variety of senior leaders within the business so to introduce this requirement specifically for the Appointed Actuary risk diminishing others' responsibility.

Q2.5.1 - Should IPSA include a provision requiring auditors to notify the Reserve Bank if they become aware that an insurer is failing to comply with its accounting and financial reporting obligations?

We note that this proposal is already provided for in the Deposit Takers Bill. The proposed amendment, as described in the consultation paper, is too broad (in that it is not clear if the non-compliance must be serious or substantial, versus minor infractions).

Unless the obligation is tightly defined, there is a risk that auditors will substantially increase their fees, again driving up compliance costs.

Q2.6.1 - Should a serious and persistent breach of statutory due diligence duties (if they were introduced) be grounds on which a court might issue an industry-wide banning order?

Yes, we support this concept.

2.7 – Governance

With respect to Section 2.7 (Governance) and 2.8 (Risk Management), consideration needs to be given to the application of standards on licensed insurers that are branches of overseas insurers. For example, would existing APRA Governance standards and Risk Management standards be sufficient for a Branch of an APRA-regulated insurer?

Q2.7.1 - Do you agree that it would be appropriate for IPSA to empower a governance standard?

The proposed development of a Governance Standard is logical, especially to enhance or replace the existing IPSA Governance Guidelines document, which we understand has not been reviewed since 2011. However, as noted in paragraph 2.7.9 of the consultation paper, we strongly support full public consultation on the detailed content of such standard.

Q2.7.2 - Can you suggest any principles that should guide the drafting of empowering provisions or the design of governance standards?

We support the idea of a standard that blends prescriptive requirements with principles-based rules as described in paragraph 2.7.12 of the consultation paper. There are many well-established principles in existence (such as those governance frameworks developed in the US and the UK). We also noted that APRA's CPS 510 is due for review this year (2023). As far as possible, a governance standard should:

- apply equally to all insurers;
- have the flexibility to introduce new obligations where warranted by insurers' circumstances;
- align with relevant overseas requirements; and
- not stand in isolation[19] to other standards which touch on an insurer's governance structure, board composition, risk management, and so on. For instance, a governance standard should provide for how the Appointed Actuary fits into an insurer's governance structures.

[19] This does not mean that all matters need to be contained in a single standard. Rather, relevant standards should be consistent and capable of being read together and not duplicate one another.

Q2.8.1 - Do you think it is appropriate for IPSA to empower a risk management standard? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

We agree in principle to this, subject to more discussion about the detail of such standard. A risk management standard will require careful development and consultation and we suggest that the APRA standard CPS 220 would be a good starting point.

Key considerations will be how the proposed standard interacts with section 73 of IPSA, including whether insurers will continue to be required to maintain their own risk management programmes, and, if so, how the risk management programme will interact with any obligation to maintain an ICAAP/ORSA. Further, a risk management standard should be integrated with other standards (per our comments at 2.7.2, above).

As noted in paragraph 2.8.10 of the consultation paper, there should be full public consultation on the content of such standard.

Q2.8.2 - Do you think it is appropriate for IPSA to empower a standard requiring an ICAAP/ORSA process? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

We consider this to be appropriate if it:

- caters for an insurer's size and resources,
- is principles based and outcomes focussed and
- is aligned to other standards or timeframes defined by the sector or organisation.

If a standard requiring an ICAAP/ORSA is introduced, it should be clear how the standard interacts with other standards – in particular, the solvency standard – and relevant obligations in IPSA.

There should be full public consultation on the content of any such standard, especially to ensure that any ICAAP/ORSA standard is not a duplication of the existing Solvency Standard requirements. As noted in our overarching comments, this is another area in which the RBNZ will need to clarify its approach to regulating domestic and overseas insurers.

Q3.1.1 - Do you agree that it is appropriate for IPSA to contain a requirement for RBNZ to consult with the FMA, before the RBNZ issues or cancels an insurer licence issued under IPSA?

We agree that it is appropriate for IPSA to contain a requirement for RBNZ to consult with the FMA before the RBNZ issues or cancels an insurer licence under IPSA. However, the consultation with the FMA should only be relevant if the entity is also licensed under legislation managed by the FMA[20].

Q3.2.1 - Do you agree with the proposal to consolidate the approval process for change of control, change of corporate form, transfers, and amalgamations into a single test? Why?

Yes. We agree with the consultation paper that there are circumstances in which policyholders' interests will (or may) be affected by a particular proposed transaction, and it is important that the Reserve Bank have the express statutory authority to consider a proposed transaction in light of those interests. Consideration should be given to a wide range of factors that appropriately account for all restructures and transactions included in the single test. The acquisition thresholds in the Insurance Acquisitions and Takeovers Act 1991 for Australia may be helpful in articulating or forming some of the factors.

[20] Note the similar obligation on the FMA arising under Section 409A of the FMCA (inserted by the CoFI amendment act).

Q3.2.2 - Do the proposed permissible considerations cover an appropriate range of considerations or are there other matters the Reserve Bank should be considering?

In addition to the matters described in the example at paragraph 3.2.16 of the consultation paper, the Reserve Bank should be required to consider whether it is appropriate to consult with the Commerce Commission before approving a restructure (as defined in the consultation paper).

Q3.2.3 - Please identify any issues that you believe should be governed by a 'red line' prohibition – i.e. transactions that the Reserve Bank must not approve.

None identified.

Q3.2.4 - Please identify any constraints that you think should be placed on the Reserve Bank's ability to attach conditions to its approval of a restructuring.

The conditions should be limited to those considerations set out in section 21(2) of IPSA.

Q3.2.5 - What do you consider to be the appropriate mechanism for setting out details of the approval process: primary legislation, secondary legislation (i.e. regulations), guidelines, or other?

We support the mechanism being in primary legislation. Clear rules at this level will be important for insurers by providing for certainty and given the regulatory and commercial significance of the approval power.

Q3.2.6 - How should the Reserve Bank balance market freedom with policyholder security in assessing restructuring transactions? Do you have any comments on wording that you think would capture this balance appropriately?

The "permissive" approach described in the consultation paper[21] is more likely to lead to an adequate balance between market freedom and policyholder security than a prescriptive approach. The prescriptive approach – requiring the Reserve Bank to consider policyholder security in every instance – will in many cases lead to an unnecessarily slower approval process in situations where the proposed transaction will manifestly not have an impact on policyholder security.

Noting the comments in the consultation paper at paragraphs 3.2.28 to 3.2.30, we agree that it is clearly desirable for policyholders to not be adversely affected by restructuring. However, any principles need to contemplate situations where a restructuring has an adverse impact on policyholders in relative terms, but the restructured entity nonetheless continues to meet IPSA requirements in absolute terms.

It would, for example, seem illogical for the RBNZ to prevent a restructuring even though the restructured entity would remain compliant with the needs of the IPSA regime and may be at an equal or higher level of soundness compared to some other licensed entities, albeit at a lower level than the original entity.

When making assessments about impacts on policyholder security, RBNZ must continue to recognise the different nature of life insurance (long term) compared to general insurance (predominantly annual).

Q3.2.7 - Should the requirements to consider policyholder interests be different for statutory funds than for other restructuring transactions for which Reserve Bank approval is required?

Yes – the nature of insurance business covered by statutory funds may justify different considerations and a potentially greater focus on policyholders' interests given the long-term nature of the relevant contracts and their generally reduced ability to move between insurers.

Q3.2.8 - Would it be helpful for Reserve Bank guidance on approval processes to say more about how we interpret the requirement to consider policyholder interests?

Yes, guidance to clarify is helpful. However, as noted above, we consider that the basics of the approval process should be set out in primary legislation. Guidance should be used only for further detail where necessary.

[21] Paragraph 3.2.33.

Q3.2.9 - Should approval processes include a requirement for us to consult with the FMA as part of our approval decision-making?

The Reserve Bank should have a discretion to consult with the FMA as appropriate (rather than a hard requirement). There would need to be clarity on how the outcomes of this consultation were reflected and an assurance that this process is not used a 'back door' for the RBNZ to apply non-prudential considerations.

Q3.2.10 - Do you agree that section 44 should be extended to apply to the acquisition of insurance business by a licensed insurer from a non-licensed overseas insurer?

We support this in principle as it is possible that such a transaction could impact on existing New Zealand policyholders.

Q3.2.11 - What do you think the appropriate threshold should be for a change of control to be notified to the Reserve Bank? Why?

We would support 50% voting rights being the threshold, which is consistent with existing levels in IPSA and the Deposit Takers Bill.

Q3.2.12 - Please comment on the appropriateness of: (a) replacing the fixed 20 working day timeframe for approvals with a 'within a reasonable time' timeframe, or (b) extending that timeframe to 45 working days. Please provide any other comments or options you consider appropriate.

We do not support replacing the fixed 20 working day timeframe for approvals with a 'within a reasonable time' timeframe. The current 20 working day timeline is clear. Replacing the timeframe with a "reasonable time" timeframe would introduce ambiguity as it is too open ended and would provide no certainty for the sector or accountability for the regulator.

We recognise the challenges with legislative provisions that require an approval to be processed by the RBNZ as swiftly as practicable, especially because transactions can vary greatly in terms of scale and complexity and the regulator needs all relevant information before it can make an informed decision. We also recognise that slow or uncertain decision making reduces investor confidence.

The current timeframe[22] can lead to confusion and encourages the regulator to continue asking for more information in order to give it more time to make a decision. To provide certainty and support efficient processing it is important for the regulator to provide through guidance or otherwise clear information requirements for entities making applications.

While we support retaining the status quo, alternative approaches might include:

- supplementing the existing timeline with a requirement for the Reserve Bank to notify the applicant, within (say) 10 working days of receiving the application, whether any additional information is required, or
- setting the timeframe "as soon as reasonably practicable but no less than 45 Working Days", which would suggest the need for haste in processing while providing a longer but defined period for more complex issues.

These might both mitigate the confusion identified in the consultation paper[23],lead to more realistic expectations being set while also maintaining a healthy pressure on the regulator to make a decision swiftly.

[22] That is, within 20 working days of receiving 'all of the information that is reasonably required'.
[23] Paragraph 3.2.47.

Q4.2.1 - Should IPSA empower a data and disclosure standard that could set out disclosure requirements, including data that should be made available to the public?

While we recognise that other countries such as Australia already require disclosure of more information than New Zealand, the consultation paper does not make a case for specific information to be provided. In fact, we note the comment that:

> *While we have no specific plans at the moment to do so, we can imagine that publishing some well-defined comparative data could serve a useful purpose in facilitating market discipline*. (para 4.2.3)

Without knowing exactly how the powers would be used, what data would be requested from insurers, and what data would be made public, it's hard to comment in detail.

Purpose of data

We recommend caution when publishing data for market discipline since insurers may have differences that aren't obvious to the audience, leading to comparisons that do not reflect like for like. Ownership structures, the nature of the business underwritten, and "legacy versus contemporary books" are examples of these types of differences.

Providing the public with lengthy and potentially complex information about insurance cover will be confusing and detract from other pertinent information, such as policy terms and exclusions. Due to New Zealand's low financial literacy and underinsurance problems, this is especially concerning.

Hence, disclosure must be meaningful to the customer and should strike a balance between keeping them informed and not deterring them from reading the important information or accessing insurance that meets their needs.

The public should not be assumed to base their opinion of an insurer on regulatory disclosures. Customer perceptions of an insurer may be influenced by factors such as the brand's reputation, the ease of the claims process, and the payment of claims. Communication and marketing are part of an insurer's overall marketing and communication strategy and are not normally part of regulatory disclosure.

The RBNZ should conduct robust research and user experience testing with the public to learn how consumers form their view of insurers, what disclosures would be valuable to them, and how they can be presented in a way that customers can understand them.

Data and disclosure standard

Further consultation would be needed with insurers prior to data being requested if a data and disclosure standard were introduced. This would help ensure that requests for data are:

- commonly understood amongst insurers,
- relevant and of value to the regulator and do not double up on information available through other reporting provided to regulators and industry bodies, and
- coupled with reasonable response deadlines, especially as insurers will have multiple ways of recording and organising data (which may give rise to difficulties in distilling the information to be provided).

At a minimum, a data and disclosure standard would need to be clear regarding:

- What information can be requested;
- The purpose for which the information is being requested;
- What information can be shared and with whom, eg, which other regulators/entities (including NZ and overseas regulators);
- Under what circumstances information can be shared;
- To what standard RBNZ will need to be satisfied appropriate protections are in place to maintain confidentiality if it does share information;
- In what circumstances RBNZ is obliged to inform the entity whose information it is that the information will be shared.

In developing any standards, RBNZ will need to engage closely with insurers to ensure that data sought can be provided by insurers in a straightforward manner and without undue expense (e.g., it already exists) and ensuring the data sought and if relevant disclosed will deliver value and not be anti-competitive, etc (as per comments above about interpretation and use).

If this proposal is to be progressed further, the final planned omnibus consultation should contain the substance of the proposal.

Thank you again for the opportunity to submit on the Bill. If you have any questions, please contact our s9(2)(a) by emailing s9(2)(a).

Yours sincerely,

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27 February 2023

Review of the Insurance (Prudential Supervision) Act 2010 Options Paper 4: Governance, Supervisory Processes and Disclosure

We welcome the opportunity to make submissions on the consultation paper (Paper 4, Governance, Supervisory Processes and Disclosure), which has been published by the Reserve Bank of New Zealand (Reserve Bank).

The New Zealand Society of Actuaries (NZSA) is the professional body for actuaries practicing in New Zealand with members working in a wide range of roles. NZSA currently has over 400 members and approximately 230 of those are qualified actuaries. There are around 50 appointed actuaries to New Zealand's licensed insurers and most are members.

The appointed actuary regime was enacted through the Insurance (Prudential Supervision) Act 2010 (IPSA) and each licensed insurer must have an appointed actuary. The Act sets the framework for insurers carrying on business in New Zealand and is of particular interest to many of our members. As such, NZSA is well placed to provide expert comment on the role of appointed actuaries and actuaries more widely in governance.

The views of the membership were sought in preparing this submission and there is a high level of agreement within the membership as to its content.

The key points of our submission are:

- **NZSA is generally supportive of clarifying some aspects of IPSA and improving and modernising the regulatory framework for insurers**. However, we are concerned at potential additional complexity or overreach where that is disproportionate for the NZ market. We note that Australia and the UK were used as comparators for the NZ market in the consultation. While we agree there are similarities between the markets, Australia and the UK are significantly larger markets with substantially more resources available both within insurers and the regulators.

- **We are supportive of IPSA empowering standards as outlined in the consultation, including the potential introduction of an Actuarial Advice Framework, Governance and Risk Management standards, and an ICAAP/ORSA standard**. Such initiatives would be in many cases not new to actuaries in New Zealand (for example, those with overseas owners). The introduction of such standards should help improve the understanding and practice of good governance within companies, and aid informed regulatory oversight.

- **However, the development of a large suite of standards will require further detailed consultation with industry**. They will need to be a good fit for insurers of different sizes and risk profiles. In addition, NZSA will need to develop certain professional standards to sit alongside the new standards. Given the number and breadth of new standards proposed, this process will require the commitment of significant resources from NZSA and its membership, insurers and regulators. As such, we believe a realistic timetable needs to be set which appropriately prioritises and paces the development and implementation of the standards.

- **We are strongly opposed to the introduction of a statutory duty of due diligence with civil pecuniary penalties on appointed actuaries**. NZ has a small pool of actuaries and the imposition of such a statutory duty with civil pecuniary penalties risks shrinking this pool further. If the purpose of this proposal is to further empower the appointed actuary as an independent voice within insurers, then we believe this would be achieved by the introduction of further standards as detailed above and the recent modernisation of NZSA's Code of Conduct and Disciplinary Procedure (in force July 2023) . We believe it would be invidious to single out appointed actuaries when good governance is better as a shared responsibility.

- **The consultation referred to "policyholder interests" in several contexts. Defining this term can be complex and will differ from insurer to insurer, or in different situations**. We believe the Reserve Bank should be solely concerned with the economic interests of policyholders to ensure financial soundness. In determining the economic interests of policyholders, it is necessary to balance interests of policyholders with shareholders and other stakeholders – prioritisation is rarely straightforward. We counsel against too rigid or prescriptive a definition that may not prove robust to future trends or unanticipated situations.

We would be glad to discuss our submission in more detail and would encourage the Reserve Bank to continue its close consultation with industry and key stakeholders on this important topic.

Yours sincerely

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Section 2: Governance, key officers and control powers

2.2 Fit and proper

Q 2.2.1 Should IPSA be amended so that a licensed insurer must obtain the Reserve Bank's approval prior to appointing a director or relevant officer? Would this create any difficulties for insurers?

We do not agree that IPSA should be amended to obtain approval *before* an appointment. We are concerned about the risk of delays in approval with the insurer left to drift without a key person in post. In practice, the combination of the scarcity of experienced talent, the time such high-level appointments take and the requirement to obtain Reserve Bank approval *after* appointment, means that insurers are highly motivated to make appointments which will obtain Reserve Bank approval.

We note IAIS ICP provision 5.3.2 allows the supervisor to assess the suitability of key persons "as soon as possible after appointment".

Instead of a requirement to obtain prior approval in IPSA, we suggest the principle of keeping the Reserve Bank meaningfully engaged throughout the appointment process for key people should be included in the proposed governance standard.

Q 2.2.2 Should insurers have a duty to inform the Reserve Bank if they become aware of information that might reasonably cast doubt on a director or relevant officer's ongoing fit and proper status?

We agree with this proposal in principle. We note the provision in the Deposit-Takers Bill (DTB) for the disclosure of information to the Reserve Bank "as soon as practicable" and would appreciate further comment from the Bank as to the interpretation of this clause. For example, an insurer should conduct an internal investigation to confirm whether the doubt is reasonable before informing the Reserve Bank.

Q 2.2.3 Are there any reasons for, or against, extending fit and proper requirements to senior managers? Is 'managers that report directly to the chief executive officer' a useful way of delineating who should be captured as a 'senior manager'?

We do not think the definition of "managers that report directly to the chief executive officer" is useful or practical. It could lead to distorting the organisational structure of an insurer and downplaying the seniority of important roles.

We do not believe there is a case for extending the fit and proper requirements further into executive management. We believe the roles covered under current fit and proper requirements – directors and specific clearly-defined executives – hold the relevant responsibilities to ensure an insurer is suitably managed and directed. Further roles are not as consistently defined across companies.

2.3 Directors' accountabilities and duties

Q 2.3.1 Are current directors' duties under IPSA appropriate? Or is there a case for imposing wider duties, to reflect the potential impact of insurer distress on policyholders and the wider economy?

We believe current directors' duties under IPSA are appropriate. Without commenting on the penalties proposed in the DTB, if directors' duties under IPSA were to be widened, then in principle we support being consistent with the DTB - that is, that directors (not executive officers) should exercise due diligence to ensure *compliance* with prudential obligations, as defined in paragraph 2.3.12 of the consultation.

Q 2.3.2 If there is a case for broader duties, which approach is more appropriate: the narrower approach proposed in the DTA , the extensive approach adopted in the UK/Australia, or some other approach?

We support the DTB approach for directors as defined above and would not be in favour of the extensive approach adopted in the UK/Australia as described in 2.3.13, for the reasons given in 2.3.14.

We believe resourcing for both insurers and regulators of the extensive approach would be highly challenging in New Zealand. We also do not see a rationale for a more extensive approach for insurers compared to banks.

Q 2.3.3 Are there any other considerations you would like to draw to our attention when thinking about director's duties?

None

Q 2.3.4 Other than the duty to life policyholders established under the statutory fund regime, are there any other areas under the IPSA regime where directors or insurers should be obliged to consider policyholder interests or give priority to policyholder interests ahead of those of shareholders or members?

We have not identified any areas where additional duties to consider policyholder interests should be placed on directors of insurers.

Managing an insurer involves ongoing balanced consideration of shareholder, member and policyholder/owner interests. This includes consideration of issues such as policyholder security, benefit entitlements, contractual rights, as well as the solvency, capital adequacy and financial strength of the corporate entity. These issues are closely interlinked. For example, shareholders need to earn a reasonable return on capital in order to provide the business with the capital it needs. This was seen particularly after the Christchurch earthquakes when shareholder capital injected into New Zealand following the Christchurch earthquakes firmed up the market and benefited policyholders by supporting claim payments.

We do not think there is a situation where it would be always appropriate to require one of these interests to be a priority at the potential expense of the others. Prioritisation between the interests of policyholders with shareholders and other stakeholders is rarely straightforward. We counsel against too rigid or prescriptive a definition that may not prove

robust to future trends or unanticipated situations or may constrain necessarily fine judgements. To this extent, we find the wording of section 105(2) of IPSA ("priority to the interests of policyholders of those policies over the interests of shareholders or members" in a statutory fund) difficult and encourage the Reserve Bank to review this existing wording as part of the IPSA review.

We also note that IPSA (section 22) does allow the Reserve Bank to impose conditions of licence which could address specific issues on the treatment of policyholder interests (or other issues) if deemed to be required.

2.4 The Appointed Actuary

Q2.4.1 Would it be helpful for standards to:

(a) set out clearer expectations for the appointed actuary's role;

We support that standards should clearly set out the Reserve Bank's expectations for the appointed actuary role. Care is required to ensure that the requirements are not too prescriptive as companies, and hence the role, can all be quite different.

(b) set out the appointed actuary's place in the insurer's governance structures; and/or

Differences between insurers make this suggestion difficult to come up with a 'one size fits all'. The key issue is that the appointed actuary should have demonstrable, and unfettered, access to the Board, as per the Reserve Bank's Expectations of Insurers and Appointed Actuaries, published after the Thematic Review. Currently IPSA 80(3) – access to information arguably already allows for this.

Because we believe the appointed actuary should not have statutory liability there is no need for the Reserve Bank to set out the insurer's governance structure – as expanded upon in response to 2.4.4.

(c) require insurers to explicitly consider resourcing needs for the appointed actuary role?

We interpret this suggestion as the capacity for an individual to hold multiple roles – either within a company (multiple hats) or across multiple insurers. We suggest the onus be on the insurer's board to take responsibility to ensure that the appointed actuary has the capacity and resources to fulfil their role(s). We also note that individual appointed actuaries need to take responsibility to consider their own ability to provide actuarial services as part of the NZSA Code of Conduct.

Q 2.4.2 Would it be valuable to require insurers to have an actuarial advice framework in place under IPSA?

We are supportive of an actuarial advice framework under IPSA. It would be helpful for the role of the actuary and the purpose of and place for actuarial advice to be clear to all within an insurer.

We suggest that the Reserve Bank standards set out minimum requirements, with requirements above the minimum to be agreed between the insurer and the appointed actuary.

The development of a Reserve Bank standard would require consultation in which we would be happy to participate. We would be keen to ensure that the standards allow a framework which is not one-size-fits-all but reflects the size and risk profile of the insurer.

Q2.4.3 To what extent do you think that the Reserve Bank's power to remove an appointed actuary based on fit and proper requirements provides adequate incentives and sanctioning power, in light of the role that appointed actuaries play in the regulatory framework?

We believe that the fit and proper requirements provide adequate incentives and sanctioning power. IPSA 39 currently allows the Reserve Bank to remove the appointed actuary if it deems appropriate.

We also point to NZSA's revised Code of Conduct and Disciplinary Scheme (DP) which come into force in July 2023. The Code sets out the principles which actuaries are required to observe: Integrity, Compliance, Competence and Care, Objectivity, Speaking Up, and Communication.

Under the DP, Misconduct is defined as "any acts or omissions by a Member that do not meet the standards as reasonably determined and expected by the Society." The standards and expectations of the Society are set out in the NZSA Code of Conduct.

The sanctions available under the Disciplinary Process for Misconduct are wide and include a public reprimand, suspension or expulsion and a pecuniary penalty.

We believe that the threat of loss of professional standing through the working of the NZSA Disciplinary Process, combined with the current fit and proper process, is strong incentive for appointed actuaries to perform their role in line with fit and proper requirements. We note that any one of the sanctions mentioned in the paragraph above would cause the appointed actuary to fail the fit and proper requirements.

Q2.4.4 Should the Reserve Bank impose a statutory duty on the appointed actuary to use due diligence to carry out their assigned role, enforceable with a civil pecuniary penalty?

We do not believe a statutory duty of due diligence should be imposed upon the appointed actuary, whether an employee or consultant. We do not accept that a civil pecuniary penalty would be appropriate for an executive advisory role. We believe this proposal would have serious adverse consequences for the insurance industry and its customers.

We describe in our answer to Q 2.4.3 the revised NZSA Code of Conduct and Disciplinary Process. These act as a very strong incentive for all actuaries (including appointed actuaries) to perform their duties in line with Code principles. The principles of Compliance and Competence and Care are particularly relevant here. Actuaries must also follow NZSA Professional Standards for specific types of work.

Practising actuaries must meet the continuous professional development requirements and conduct standards of NZSA and of their qualifying body (most commonly the UK's Institute

and Faculty of Actuaries or Australia's Actuaries Institute). This keeps actuaries at the forefront of professional expertise, and adds another layer of professional discipline to performing the actuarial role with due diligence.

Taking all the professional requirements together, there are already weighty impositions placed on appointed actuaries to perform their duties diligently, and heavy sanctions for not doing so. We believe an additional statutory duty on appointed actuaries to follow due diligence in their assigned role would be cumbersome and unnecessary.

Appointed actuaries advise boards on matters involving uncertainty and complexity. Appointed actuaries are not the only contributors to the total advice boards receive when making their decisions. It would be invidious to single out actuaries for a civil penalty.

We also note that actuarial information contained in Financial Statements and Insurer Solvency Returns are subject to external audit review, imposing a layer of external review over the appointed actuary's work in these areas.

The introduction of the possibility of a civil pecuniary penalty for doing complex work which few people would have the expertise to adequately assess, would be likely to reduce an already insufficient pool of suitable candidates for the role of appointed actuary. Insurer costs would increase as a result. These outcomes would be detrimental to policyholder interests.

We also reiterate that NZSA is supportive of IPSA empowering standards as outlined in the consultation, including the potential introduction of an Actuarial Advice Framework, Governance and Risk Management standards, and an ICAAP/ORSA statement. Such initiatives would be in many cases not new to actuaries in New Zealand (for example, those with overseas owners). The introduction of such standards in New Zealand should help improve the understanding and practice of good governance within companies, and aid informed regulatory oversight. An Actuarial Advice Framework would be particularly helpful in making visible within an insurer the role of the appointed actuary as an independent voice. In our view, sharing the responsibility for good governance in this way is a better approach than targeting appointed actuaries with personal liability.

Q2.4.5 Should appointed actuaries have a duty to identify and present the interests of policyholders? If so, should that be a general duty or only one that applies in specific contexts (such as preparing the financial condition report?)

We support the introduction of a standard that defines a role for appointed actuaries to identify and present the economic interests of policyholders (please see Q3.2.6 for further comments on what constitutes economic interests). The financial condition report would be the appropriate place to comment on that.

In defining such a role, it will be important to avoid giving the impression that the appointed actuary has a wider role as a customer advocate.

2.5 The Auditor

Q2.5.1 Should IPSA include a provision requiring auditors to notify the Reserve Bank if they become aware that an insurer is failing to comply with its accounting and financial reporting obligations?

This is a potentially complex issue and we recommend that the Reserve Bank consult with the audit profession to work through the possible implications of such a requirement.

2.6 Banning orders

Q 2.6.1 Should a serious and persistent breach of statutory due diligence duties (if they were introduced) be grounds on which a court might issue an industry-wide banning order?

In principle, if a statutory duty were to be introduced we would support a banning order; however we reiterate our responses to 2.4.4 above.

2.7 A governance standard

Q 2.7.1 Do you agree that it would be appropriate for IPSA to empower a governance standard?

We support, in principle, an amendment to IPSA to empower a governance standard. We believe that a well-constructed standard would provide a powerful framework for insurer boards.

Company boards are complex entities, staffed by individuals from a range of backgrounds, skills and experiences. That diversity is the most valuable attribute of boards, allowing them to function effectively when faced with a variety of issues. To effectively opine on the construction and operation of those boards, we believe the Reserve Bank will require regulators with board level experience themselves.

As noted in the consultation, it will be important that the standard recognises the varying sizes and risk profiles of insurers and as such the requirements should be proportional.

Q 2.7.2 Can you suggest any principles that should guide the drafting of empowering provisions or the design of governance standards?

The designing and implementation of a governance standard will be a complex process with numerous stakeholders and we welcome the opportunity to provide feedback on a fuller consultation at the appropriate time.

2.8 Risk management

Q 2.8.1 Do you think it is appropriate for IPSA to empower a risk management standard? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

We support, in principle, an amendment to IPSA to empower a risk management standard. A well-designed standard would help to set insurer expectations about the design and management of their risk management plan.

Key aspects of the standard would be to formalise the process by which the Reserve Bank interacts with insurers to ensure their risk management plans remain current and provide clarity to insurers as to the circumstances under which they would be required to notify the Reserve Bank of changes or issues relating to their existing plan. The standard should also clearly lay out the Reserve Bank's powers of enforcement and possible sanctions for breaches of the standard.

As with the governance standard, we believe that the risk management standard will need to recognise the varying size and risk profile of insurers with NZ and establish proportional requirements where appropriate.

We welcome further consultation on this topic in due course.

Q 2.8.2 Do you think it is appropriate for IPSA to empower a standard requiring an ICAAP/ORSA process? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

We support the introduction of an amendment to IPSA to empower ICAAP/ ORSA in order to achieve more integrated risk and capital management practices in NZ. This would be in line with the IAIS guidance and global trends.

We would however propose that the timing of any new requirement is aligned with the other planned changes to the solvency standards. In the interim, we support the leveraging of local practices and other concurrent requirements and guidance including those of the appointed actuary. As such we would be supportive of a proportionate and a phased approach as has been done in many international jurisdictions. This gradual approach can initially involve a more qualitative phase by leveraging from the current risk management practices but by requiring the company management to demonstrate tangible progress towards a risk informed and integrated business decision making where possible.

3.0 Supervisory processes

3.1 Licensing

Q 3.1.1 Do you agree that it is appropriate for IPSA to contain a requirement for RBNZ to consult with the FMA, before the RBNZ issues or cancels an insurer licence issued under IPSA?

We agree that there is some logic in requiring the Reserve Bank to consult with the FMA, especially given the reciprocal requirement for the FMA and the upcoming COFI legislation. Policyholders would probably assume that such consultation does take place, and it is better to formalise the intent, scope and processes for such information-sharing than leave it to be done informally.

However, if any information from the FMA were used to make a decision against the insurer, that would add to the need for transparency from the Reserve Bank.

3.2 Approvals for restructuring

Q3.2.1 Do you agree with the proposal to consolidate the approval process for change of control, change of corporate form, transfers and amalgamations into a single test? Why?

Yes. It makes sense in any form of "restructuring" that the "permissible considerations" are the same. A form of "restructuring" not covered in the discussion document is where a policy reconstruction is undertaken via a "Scheme of Arrangement" under Part 15 of the Companies Act 1993. That form of "restructuring" should also be caught, similar to statutory fund changes are.

Q3.2.2 Do the proposed permissible considerations cover an appropriate range of considerations or are there other matters the Reserve Bank should be considering?

Yes. The "permissible considerations" are lifted from section 48 of IPSA and include "any other matter the Bank considers relevant" so are comprehensive. The "permissible considerations" also include "the interests of the policyholders". The interests of the policyholders requires more specificity and we comment on that later in our submission.

Q3.2.3 Please identify any issues that you believe should be governed by a 'red line' prohibition – i.e. transactions that the Reserve Bank must not approve.

There is no need for "red line" prohibitions if the "permissible considerations" are comprehensive.

Q3.2.4 Please identify any constraints that you think should be placed on the Reserve Bank's ability to attach conditions to its approval of a restructuring.

A constraint should be that there can be no more conditions than IPSA permits for a licenced insurer. The Reserve Bank should be required to explain how IPSA permits any conditions applied.

Q3.2.5 What do you consider to be the appropriate mechanism for setting out details of the approval process: primary legislation, secondary legislation (i.e. regulations), guidelines, or other?

We believe the appropriate mechanism for setting out an approval process is through secondary legislation via a standard. The documented process needs to be able to be changed within a reasonable timeframe and subject to public feedback. The approval process is likely to be complex and thus require too much documentation for it to be within primary legislation.

We believe that the Reserve Bank should set standards or guidelines which are fairly generalised. Too rigid and definitive a framework for restructuring could cause unintended adverse consequences. Making restructuring too difficult would not be in the interests of the industry or policyholders. A restructuring (perhaps of a type not yet anticipated) could improve prospects for policyholders compared to the status quo.

Q 3.2.6 How should the Reserve Bank balance market freedom with policyholder security in assessing restructuring transactions? Do you have any comments on wording that you think would capture this balance appropriately?

The need to balance market freedom with policy holder security should apply equally in all circumstances based around sound principles for assessing policy holder security. We believe "policy holder security" should be limited to meaning policy owner economic interests which we broadly define as the need to consider contractual benefits, reasonable expectations of benefits, and the security of those interests. NZSA proposes that an assessment basis (set of tests) be set out in a standard so it is clear how those economic interests should be assessed. We note that too rigid a test to assess economic interests could unnecessarily restrict industry restructurings.

The policy owners should include both those in-scope policy owners i.e. those whose policies will be directly affected, and those whose policies will be indirectly affected i.e. those out of scope in the restructuring (e.g. existing policy owners in the purchasing insurer for example).

We note the Reserve Bank in its guidelines for insurers regarding transfers and amalgamations requires consideration of policyholder security, benefit entitlements and contractual rights. The Reserve Bank guidelines further require consideration of the solvency, capital adequacy and financial strength of the transferee. All these aspects should be assessed via the agreed tests set out in a standard.

Q 3.2.7 Should the requirements to consider policyholder interests be different for statutory funds than for other restructuring transactions for which Reserve Bank approval is required?

The principles for assessing policyholder interests should be the same for all "restructurings". However, the outcome of the tests will be different. For example, a car policy is short term and able to be cancelled by the policyholder (often with a refund) and by the insurer. The policyholder interests in that case are quite different to a life insurance policy with long term features.

Q3.2.8 Would it be helpful for Reserve Bank guidance on approval processes to say more about how we interpret the requirement to consider policyholder interests?

Yes. Setting out the tests for policy owner interests and level of materiality (at the individual policy level?) is highly desirable. See 3.2.6 above.

Q 3.2.9 Should approval processes include a requirement for us to consult with the FMA as part of our approval decision-making?

Yes, it seems a sensible requirement to consult with the FMA but the test the Reserve Bank should apply must be about economic interests.

Q3.2.10 Do you agree that section 44 should be extended to apply to the acquisition of insurance business by a licensed insurer from a non-licensed overseas insurer?

Yes. The same tests should apply in all circumstances.

Q3.2.11 What do you think the appropriate threshold should be for a change of control to be notified to the Reserve Bank? Why?

We note this is outside of the scope of NZSA subject matter expertise but our comment is that an entity being able to appoint more than X% of the governing body or having more than X% of the voting rights should be notifiable to the Reserve Bank. The reason for this being to allow awareness of strong influences on the insurer from such aspects as "drag along" provisions in a shareholder agreement or different classes of "ordinary" shares.

Q3.2.12 Please comment on the appropriateness of: (a) replacing the fixed 20 working day timeframe for approvals with a 'within a reasonable time' timeframe, or (b) extending that timeframe to 45 working days. Please provide any other comments or options you consider appropriate.

We would support a "reasonable time frame" provided the Reserve Bank undertakes to be transparent and realistic about the information it requires in each case, and sets an expected timeframe for making its decision.

4 Data and disclosure

4.2 A data and disclosure standard

Q4.2.1 Should IPSA empower a data and disclosure standard that could set out disclosure requirements, including data that should be made available to the public?

We agree with the proposal of a data disclosure standard in principle as we support the improved transparency and clarity of appropriate data provisions.

While we strongly support improved transparency with the public, the new standard would need to ensure that any additional information provided aids understanding and allows consumers to appropriately differentiate between insurers. For example, while we support the continued publication of high-level solvency information, we would argue that even this information, given its technical nature, is not well understood by consumers. Therefore, it would be important to decide whether the provision of more information is aimed at consumers, or more informed stakeholders such as agents and brokers. If the new information is aimed directly at consumers, we believe that it would be incumbent on the Reserve Bank to explain to them why that information is important when making their financial decisions.

Maintaining appropriate levels of confidentiality will also be a key consideration in the design of the standard.

We welcome further consultation on this topic in due course.

RGA Reinsurance Company
of Australia Limited

21 February 2023

Reserve Bank of New Zealand
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To the Reserve Bank of New Zealand,

IPSA Review – Governance, Supervisory Processes, Data and Disclosure Consultation Paper (Options Paper 4)
Submission by RGA Reinsurance Company of Australia Limited (RGAA)

RGAA is a life reinsurance company licensed under the *Insurance (Prudential Supervision) Act 2010*. RGAA is also licensed under the Australian *Life Insurance Act 1995.*

RGAA notes the specific scope of this consultation, namely that this consultation is not concerned with the detailed content of any specific proposed standard, but rather, whether stakeholders consider it appropriate to empower the Reserve Bank to issue new standards under IPSA. We understand that if the Reserve Bank is ultimately empowered to produce a wider range of standards, the content of those standards will be subject to further extensive consultation with stakeholders.

As an APRA-regulated life insurance company, RGAA is already subject to an expansive set of prudential standards that cover the general topics raised in Options Paper 4. RGAA therefore has no issue with the Reserve Bank being empowered to issue new standards under IPSA but is concerned about the alignment between the current APRA prudential standards to which it is already subject and any new standards that the Reserve Bank may issue in the future.

The regulatory burden for RGAA in complying with two different sets of prudential standards that are not aligned would be considerable. On this basis, RGAA urges the Reserve Bank to leverage the existing Australian prudential framework to which RGAA is currently subject to avoid additional compliance costs that will ultimately be born by New Zealand policyholders. Specifically, RGAA requests that the Reserve Bank give consideration as to whether, in appropriate circumstances, APRA-regulated entities be exempt from specific Reserve Bank standards or, alternatively, rely on compliance with APRA prudential standards as evidence of compliance with corresponding Reserve Bank standards.

The circumstances in which this may be appropriate will of course depend on the scope and specific content of future Reserve Bank standards should it be empowered to issue these standards. Appreciating that the Reserve Bank has expressly indicated in Options Paper 4 that it is seeking high-level comments only at this time on the scope of such standards, we raise below only a selection of examples that illustrate the need for consideration as to the impact to Australian-regulated life insurers that are carrying on business in New Zealand.

RGA Reinsurance Company
of Australia Limited

Fit and Proper

Q 2.2.1 Should IPSA be amended so that a licensed insurer must obtain the Reserve Bank's approval prior to appointing a director or relevant officer? Would this create any difficulties for insurers?

Prudential Standard CPS 520 – Fit and Proper ("**CPS 520**") contains a robust process for the appointment of directors and relevant officers that requires APRA-regulated entities to, amongst other things:

- maintain a Fit and Proper Policy that meets certain minimum requirements;
- ensure that the fitness and propriety of subject individuals be assessed prior to initial appointment and then re-assessed annually;
- take all prudent steps to ensure that a person is not appointed to, or does not continue to hold, a prescribed position if they are not fit and proper; and
- ensure that certain information be provided to APRA regarding RGAA's responsible persons, together with RGAA's assessment of their fitness and propriety.

RGAA is not in favour of being subject to an additional requirement to obtain the Reserve Bank's prior approval when making such an appointment as RGAA is concerned that this requirement could impede the appointment process, potentially giving rise to operational and Australian regulatory compliance impacts for the business.

Directors' Duties

Q2.3.1 Are current directors' duties under IPSA appropriate? Or is there a case for imposing wider duties to reflect the potential impact of insurer distress on policyholders and the wider economy?

In Australia, directors of life companies are subject to duties imposed under the Corporations Act 2001 (Cth) ("**Corporations Act**") and the *Life Insurance Act 1995* (Cth) ("**Life Act**"). APRA is empowered by the Life Act to issue prudential standards, which contain over 100 references to board directors' obligations across 11 separate APRA standards. Directors will also be subject to the Financial Accountability Regime once this legislation is passed and comes into effect. Option Paper 4 recognises the Australian regime as an 'extensive approach' which is relatively complex.

Given the breadth and complexity of the existing regulatory regime for directors of Australian life insurers and the operational effort required by these insurers to ensure that their corporate governance framework aligns with this regulatory regime, the addition of different or additional duties would be unduly burdensome for both the Australian directors and life companies.

Q2.3.4 Other than the duty to life policyholders established under the statutory fund regime, are there any other areas under the IPSA regime where directors or insurers should be obliged to consider policyholders interests or give priority to policyholders interests ahead of those of shareholders or members?

Section 3 of the Life Act identifies as one of its main objects the protection of '*the interests of the owners and prospective owners of life insurance policies in a manner consistent with the development of a viable, competitive and innovative life insurance industry'*. In addition to the express Life Act requirements on directors of life companies in relation to statutory funds, the prudential standards issued by APRA under the Life Act implicitly recognise this main object. For example, CPS 220 – Risk Management gives the board the ultimate responsibility for maintaining a risk management framework to manage *'material risks'*, which are defined as risks that have a material impact on the entity or the

interests of its policyholders. CPS 231 – Outsourcing and CPS 232 – Business Continuity similarly charge the board with overseeing risk management to ensure the entity's ability to meet its obligations to policyholders.

On this basis, RGAA and directors are already subject to myriad duties which require the interests of policyholders to be at the forefront of their consideration.

Q2.6.1 Should a serious or persistent breach of statutory due diligence duties (if they were introduced) be grounds on which a court might issue an industry-wide banning order?

The Corporations Act and the Life Act both currently contain a broad spectrum of options for regulators to sanction directors, including for failing to act with care and diligence and for non-compliance with prudential standards.

If the Reserve Bank is minded to add to the range of powers currently available to it the power to issue an industry ban for 'serious and persistent breach' of statutory due diligence duties, RGAA submits that there will need to be very clear regulatory drafting and guidance to enable directors to understand what type of conduct specifically could potentially trigger a penalty of this kind.

Appointed Actuaries

*Q 2.4.4 Should the Reserve Bank impose a statutory duty on the appointed actuary to use due diligence to carry out their assigned role, enforceable with a civil pecuniary penalty***?**

The underlying driver for this proposal appears to be a need to set out more clearly the duties of the appointed actuary. In Australia, the duties of appointed actuaries are the subject of the Life Act and APRA prudential standards, complemented by professional standards and practice guidelines maintained and enforced by the Institute of Actuaries of Australia.

Australian appointed actuaries have statutory obligations under section 98B of the Life Act to give information about the life insurance company to APRA on written notice by APRA. The obligation is a strict liability obligation and is enforceable by imprisonment or a civil penalty or both.

An Australian appointed actuary must also abide by the professional standards issued by the Australian Actuaries Institute, including Professional Standard 201 which provides that the appointed actuary must bear in mind the principal objective of the Life Act, namely "… *to protect the interests of the owners and prospective owners of life insurance policies in a manner consistent with the continued development of a viable competitive and innovative life insurance industry*".

RGAA submits that Australian appointed actuaries are currently subject to sufficient regulatory oversight. If additional statutory duties are proposed to be imposed by the Reserve Bank, RGAA submits that the extent of Australian regulation should be considered in relation to the extent to which Australian appointed actuaries are subject to such additional oversight. In no circumstances should appointed actuaries be subject to overlapping penalties.

RGA Reinsurance Company
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Risk Management

Q2.8.1 Do you think it is appropriate for IPSA to empower a risk management standard? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

In Australia, APRA regulated entities are subject to *Prudential Standard CPS 220 – Risk Management* ("**CPS 220**"), which requires the entity to have systems for identifying, measuring, evaluating, monitoring, reporting and controlling or mitigating material risks that affect its ability to meet its obligation to policyholders. Under CPS 220, APRA regulated entities must:

- maintain a risk management framework that is appropriate to the size, business mix and complexity of the institution;
- maintain a Board-approved risk appetite statement;
- maintain a Board-approved risk management strategy that describes the key elements of the risk management framework that give effect to the approach to managing risk;
- maintain and Board-approved business plan that sets out the approach for the implementation of the strategic objective of the institution;
- maintain adequate resources to ensure compliance with CPS 220; and
- notify APRA when it becomes aware of a significant breach of, or material deviation from, the risk management framework, or that the risk management framework does not adequately address a material risk.

Given the extensive risk management requirements already imposed on APRA regulated entities (as outlined above), RGAA submits that a risk management standard empowered by IPSA should contain an exemption for APRA-regulated entities or, alternatively, that compliance with CPS 220 be accepted as compliance with the equivalent proposed Reserve Bank standard.

Risk and Solvency Capital

Q 2.8.2 Do you think it is appropriate for IPSA to empower a standard requiring an ICAAP/ORSA process? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

As outlined in the Option Paper 4, Australian life companies have obligations to maintain adequate capital resources, which are set out in APRA's *LPS 110 – Capital Adequacy* ("**LPS 110**"). One of the requirements under LPS 110 is for the life company to have an 'Internal Capital Adequacy Assessment Process' ("**ICAAP**"), which at a minimum must include, amongst other things, adequate policies, procedures, systems, controls and personnel to identify, measure, monitor and manage risks arising from the life company's activities on a continuous basis and the capital held against such risks.

RGAA's reinsurance arrangements in New Zealand are all referrable to RGAA's Statutory Fund 2, which is subject to RGAA's ICAAP. This ensures that RGAA is adequately managing its capital for its New Zealand reinsurance arrangements.

RGAA submits that the Reserve Bank should consider aligning its capital standard with LPS 110 and/or exempt APRA-regulated life companies and require those APRA-regulated life companies to comply with Australian laws relating to capital management.

RGA Reinsurance Company
of Australia Limited

Data and Disclosure

Q 4.2.1 Should IPSA empower a data and disclosure standard that could set out disclosure requirements, including data that should be made available to the public?

Life insurance companies in Australia have obligations pursuant to the *Financial Sector (Collection of Data) Act 2001* (Cth) to disclose certain information to APRA, ASIC and the public, including but not limited to information about its solvency, capital adequacy, financial position and audited financial statements. In this regard, APRA's LRS 001 – Reporting Requirements ("**LRS 001**") sets out general standards for the provision of this information to APRA, while specific prudential standards apply to each specific data disclosure requirement.

If the Reserve Bank determines that a data and disclosure standard is appropriate and the standard sets out requirements to publish information to the Reserve Bank and the public, RGAA submits that there should be a provision allowing APRA-regulated entities to submit data in a form that complies with Australian standards.

We welcome the opportunity to discuss these matters further should you have any queries regarding this submission.

Yours sincerely,

s9(2)(a)

s9(2)(a)

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21 February 2023

Reserve Bank of New Zealand
IPSA Review – Governance, Supervisory Processes and Disclosure

Emailed to: ipsareview@rbnz.govt.nz

Tower Limited submission on Review of the Insurance (Prudential Supervision) Act 2010 (Options Paper 4: Governance, supervisory processes, and disclosure).

Thank you for the opportunity to provide a written submission on the Review of the Insurance (Prudential Supervision) Act 2010 (Governance, supervisory processes, and disclosure).

Tower Limited ('Tower') is the fourth largest insurer of domestic buildings in New Zealand. It is listed on the NZX and ASX and is a licensed insurer. Tower offers products across the domestic and small business space in both New Zealand and the Pacific Islands.

General Comments

We have contributed to the preparation of the Insurance Council of New Zealand (**ICNZ**) submission and would like to take the opportunity to highlight several areas where Tower has a differing view or wishes to express additional emphasis.

We wish to draw attention to the considerations raised within the ICNZ submission made in relation to the review of the Insurance (Prudential Supervision) Act 2010 (Scope and Overseas Insurers) in March 2021.

We are firmly in favour of ensuring there is transparency and a level playing field between overseas and local insurers.

The theme of following the Australian regime (consultation referencing APRA regulations) as a basis for all New Zealand insurers is far too onerous and will impose significant costs on domestic insurers, and therefore New Zealand policy holders, given the relative market size and revenues of the two jurisdictions, particularly as the Australian regime is more prescriptive.

Treatment of Branches of Overseas Insurers

Whilst we are supportive overall of the ICNZ submission, we wish to highlight Tower's position in relation to the treatment of overseas branches.

In the context of the proposed changes outlined, we wish to highlight the evident regulatory disparity that would be created between domestic insurers and overseas insurance branches, particularly around the application of any changes to overseas insurers and how the RBNZ intends to engage with APRA-regulated entities who operate branches here in New Zealand.

Tower's comments are as follows:

- Reliance on overseas regimes for overseas branches is not supportive of maintaining a "level playing field" due to the materiality differences and the consequent way that foreign branches are regulated by their "home jurisdiction" regulator and therefore managed by the parent.
- Treatment of overseas insurers needs to be comparable to the treatment of domestic insurers. Reliance on an overseas regulatory regime will not achieve the intended regulatory robustness that the RBNZ is intending to achieve with this consultation, as New Zealand branches of overseas entities are likely to be less material, due to the size and characteristics of their business model, than the regulated parent entity. As a result, the overseas branch will potentially achieve significantly less regulatory attention from their home jurisdiction.
- Has the RBNZ assessed the applicability of the exemption requirements, prescribed by IPSA Section 38 (ref; Fit and Proper) and Section 59 (ref; Solvency Standards and/or proposed ICAAP/ORSA), in the context of the treatment of branches of overseas insurers around the proposed changes?

We detail our further comments on each of the proposed changes below.

Fit and Proper Requirements – Q2.2.1, Q2.2.3

- Fit and Proper does not need to be extended to all 'managers that report directly to the chief executive officer', especially when pre-approval of such appointments is proposed. Requiring prudential regulatory approval for a Head of Marketing or Customer Service senior managers adds no visible or tangible benefits in relation to prudential supervision or governance over the insurer.
- As it currently sits, prudential and governance responsibilities of an insurer materially sit with the three current 'relevant officer' roles and broadening this to capture "senior managers", who likely will have little control or influence of the prudential matters of the insurer, seems to be unduly burdensome and create increased compliance, administrative and management costs for minimal prudential supervision benefit. These costs would inevitably then be passed onto policyholders.

Directors Duties – Q2.3.1

Directors already have notable and wide-ranging responsibilities and duties under the various New Zealand regulatory and industry frameworks in which they operate. Key responsibilities and duties are prescribed by the NZX Listing Rules and associated Corporate Governance Code and regulatory Acts, such as the Companies Act 1993 and the pending requirements under the Companies (Directors Duties) Amendment Bill.

- The current directors' duties under IPSA are appropriate and we do not see the need to impose wider duties. This would be unnecessarily onerous and create increased compliance, administrative and management costs for insurers, without providing any material additional benefit.

- IPSA, Section 216, as an existing liability provision for directors, although limited, is sufficient to create an obligation for directors to be materially aware of, and have oversight of, the insurer's affairs.

Appointed Actuary – Q2.4.1

- Existing requirements of the appointed actuary role are robust and above what is required in other global environments (with the possible exception of Australia).
- Imposing additional requirements, such as creating personal liability, would place unnecessary pressure on the actuarial industry in New Zealand, negatively positioning New Zealand as an attractive market for appointed actuaries.
- The appointed actuary role currently has significant oversight functions within insurers. Adding more responsibilities would transfer some of the oversight functions of the RBNZ onto appointed actuaries. We consider that this is inappropriate.

Actuarial Advice Framework (AAF) – Q2.4.2

- Clearer expectations are always welcome to assist insurers, however, we are concerned that such a framework will create undue compliance and administrative burdens on actuarial activities and responsibilities.
- The responsibilities and duties outlined in the proposed AAF are performed by actuaries currently, within the management and governance structures of the insurer.
- We are concerned that this framework will be overly restrictive or cumbersome to the valuable work actuaries perform for the insurer and wish to ensure that the cost doesn't outweigh the benefit of having to maintain and adhere to such a framework.

ICAAP/ORSA Process – Q2.8.2

- If a standard requiring an ICAAP/ORSA is introduced, it should be clear how the standard interacts with other standards – in particular, the solvency standard – and relevant obligations in IPSA.
- Careful consideration and engagement will be needed to ensure that any ICAAP/ORSA standard is not a duplication of the existing Solvency Standard requirements.
- We are supportive that there should not be any exemptions from the application of any ICAAP/ORSA standard for branches of overseas insurers incorporated in New Zealand that may prepare an ICAAP/ORSA at group level.

Thank you again for the opportunity to submit on this consultation.

Please contact s9(2)(a) should you have any questions regarding our submission or require further information.

Yours sincerely,

s9(2)(a)

s9(2)(a)

Tower Limited

03 March 2023

The Reserve Bank of New Zealand - Te Pūtea Matua
Financial System Policy and Analysis – Financial Policy
Wellington
New Zealand

By email: ipsareview@rbnz.govt.nz

IPSA Review Governance, Supervisory Processes and Disclosure Consultation

Thank you for the opportunity to provide a submission on the Reserve Banks ("RBNZ") Review of the Insurance (Prudential Supervision) Act 2010, Options Paper 4: Governance, Supervisory Processes and Disclosure, 15 November 2022. This submission is on behalf of Union Medical Benefits Society Limited (Trading as UniMed).

UniMed is an Incorporated Society registered under the Industrial and Provident Societies Act 1908 in November 1979. Its principal product and service is health insurance within New Zealand. The Society is domiciled and incorporated in New Zealand and is a Public Benefit Entity.

The Society was granted a licence by the Reserve Bank of New Zealand (RBNZ) on 23 May 2013 to operate as an insurer subject to the Insurance (Prudential Supervision) Act 2010 (IPSA). The Society is also licensed by the Financial Markets Authority to operate as a Financial Advice Provider and will be subject to licencing requirements under the upcoming Conduct of Financial Institutions (CoFI) regime.

UniMed provides health insurance products to more than 100,000 Members throughout New Zealand. While UniMed's key market segment is 'Group' workplace schemes, employees and their whānau, UniMed also provide direct to retail health insurance products and continuation options for group leavers.

We note that while the Proposal affects all licensed insurers UniMed's responses in this submission are tailored to focus on UniMed's business structure and the wider health insurance industry.

I can be contacted on s9(2)(a) or s9(2)(a) to discuss any element of our submission.

Yours sincerely

s9(2)(a)

Union Medical Benefits Society Limited

The following documents UniMed's responses to the consultation paper questions.

2.0 Governance, key officers and control functions

2.2 Fit and proper

Q 2.2.1 Should IPSA be amended so that a licensed insurer must obtain the Reserve Bank's approval prior to appointing a director or relevant officer? Would this create any difficulties for insurers?

We consider the existing IPSA requirements for an insurer to notify the RB of the appointment of a new a director or relevant officer to be appropriate and effective. We do not support the proposal to amend this protocol so that the insurer must obtain the RB's approval prior to the appointment.

The recruitment and appointment process for these key roles is an inherently complex process. It can take significant effort and time for an insurer to successfully discover and recruit an applicant who not only holds the appropriate qualifications and knowledge for the particular role, but is also the right cultural fit for the business and whose skillset is balanced and complementary against the skills and experience of existing directors and relevant officers. The challenge of attracting suitable applicants is even greater for insurers who are not based in the Auckland or Wellington regions. We are concerned that the proposed amendment would exacerbate these difficulties by further slowing down the process.

It is important that the insurer is empowered to carry out appointments (in a timely manner) which meet the particular needs of the business. The rationale for a particular appointment may be predicated on certain future strategic business initiatives. The Board or Chief Executive of an insurer are best positioned to make these appointments in accordance with the Fit & Proper policy in place and in recognition of the business's needs.

The existing fit & proper requirements under IPSA are, in UniMed's opinion, appropriately detailed and clear enough to result in the production of robust Fit & Proper policies held by insurers. These policies are also approved by the RB as satisfactory in content. Provided the insurer is adhering to the appointment rules set out in their Fit & Proper policy (which they are required by IPSA to do) there should be no reason for the RB to deny an appointment. It would therefore seem that this process would have little value add but would add to the complexity and timeliness of the appointment process.

If this proposal were to come into effect, it would be appropriate that any denial of appointment be aligned with existing removal powers under section 40. Specifically, a requirement for the RB to include a statement of the Banks reasons for the non-approval and an opportunity for the insurer and director or relevant key officer to have a reasonable opportunity to make submissions on the matter. Obviously, this would have a significant impact time impact and could leave the insurer absent a director or relevant officer for a considerable amount of time.

Q 2.2.2 Should insurers have a duty to inform the Reserve Bank if they become aware of information that might reasonably cast doubt on a director or relevant officer's ongoing fit and proper status?

We consider the existing protocol appropriate and do not support this proposed duty. Under the current IPSA requirements, insurers must at the time of licensing submit for the RB's approval a copy of its Fit & Proper policy, which will include details on 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' (emphasis added). The insurer must obtain the Bank's approval before its fit and proper policy is amended in a material way.

These existing rules provide the RB the necessary opportunities to satisfy itself that there are appropriate triggers and processes in place for the insurer to continuously consider and, where required, investigate, a person's fit and proper status.

The insurer's fit & proper policy will set rules for how **it** satisfies itself that a person **continues** to meet fit and proper requirements and how a situation will be approached if these requirements come into question. This will undoubtedly include a mechanism for an internal review.

The internal review could determine, amongst other outcomes, that a misunderstanding has occurred or the matters which gave rise to the review have been adequately resolved. The proposed duty for the insurer to inform the RB prior to concluding their internal review could unnecessarily cast ill light on the person involved and could lead to employment law grievances.

IPSA presently requires the insurer 'take all reasonable steps' to comply with its fit & proper policy. When the insurer is properly assessing (on a continuous basis) the fit & proper status of its directors and key officers, matters of concern would be dealt with immediately and the RB would be promptly notified of the individuals' removal should they no longer be considered fit and proper to hold the role.

If the introduction of this duty were to be considered, clarity would be needed on what constitutes 'information that might reasonably cast doubt' on an individual's fit and proper status, as this may be subjective. It would also need to be clear what would take place should the RB and the insurer come to different conclusions upon a complete investigation as to whether the individual remains a fit & proper person.

Q 2.2.3 Are there any reasons for, or against, extending fit and proper requirements to senior managers? Is 'managers that report directly to the chief executive officer' a useful way of delineating who should be captured as a 'senior manager'?

We consider that extending the scope to include all direct reports of the CEO would be significantly time intensive without adding any additional value. This proposal risks being viewed as an unnecessary compliance burden, particularly if IPSA is to be amended so that the RB's approval is required prior to an appointment.

We consider that the nature and extent of fit and proper assessments of senior managers should be an internal decision, with the insurer applying a risk based and proportionate approach.

If IPSA's Fit & Proper requirements are extended, differences in the organisational structure of individual licenced insurers should be considered. Insurance operations may be only one distinct aspect of the business. Multiple divisions may include senior managers reporting to the CEO who have no involvement in the insurance, financial or risk management activities of the business.

We consider it would be appropriate, for the RB, as the prudential regulator, to be concerned only with those senior managers (or other staff) who are in a position that allows the individual to exercise 'significant influence over the management or administration of the insurers financial standing'.

2.3 Directors' accountabilities and duties

Q 2.3.1 Are current directors duties under IPSA appropriate? Or is there a case for imposing wider duties, to reflect the potential impact of insurer distress on policyholders and the wider economy?

We understand one of the motivations for wider duties is that IPSA does little to provide for 'ongoing positive duties'. However greater penalties are the stick, not the carrot. There is a risk that introducing wider duties may lead to a 'tick box' exercise, acting more as a compliance burden rather than encouraging good practice.

The existing duties imposed on directors under IPSA, must be considered alongside other legislative duties on directors, including those in the Companies Act and the governance duties under the upcoming CoFI regime. We consider that, in whole, there are adequate statutory duties to protect both policyholders and the wider economy.

Q 2.3.2 If there is a case for broader duties, which approach is more appropriate: the narrower approach proposed in the DTA, the extensive approach adopted in the UK/Australia, or some other approach?

There are vast differences amongst insurers regulated by IPSA, (for example, UniMed's member owned structure is significantly different from a NZ listed insurer, which again is significantly different from an insurer operating in NZ with overseas ownership) which would make the extensive duties approach inherently difficult.

Should broader 'due diligence' duties be introduced these should be on a limited and least prescriptive basis, which allow directors flexibility in how they might seek to exercise these.

Q 2.3.3 Are there any other considerations you would like to draw to our attention when thinking about director's duties?

The FMA holds the role of conduct regulator over New Zealand financial institutions. The CoFI regime will introduce a broadening of duties throughout financial institutions, including at governance level. This will undoubtedly generate an enhanced level of director scrutiny and engagement with employees and agents, in order to satisfy the governance board that appropriate systems, processes and controls are in place to ensure good policyholder outcomes. We consider that together, the governance duties and obligations under CoFI and the existing directors duties under IPSA, sufficiently address the objectives of those duties of other international jurisdictions referenced in this consultation.

Q 2.3.4 Other than the duty to life policyholders established under the statutory fund regime, are there any other areas under the IPSA regime where directors or insurers should be obliged to consider policyholder interests or give priority to policyholder interests ahead of those of shareholders or members?

We believe that the principles of the CoFI regime, namely the legislated fair conduct principle requiring financial institutions to treat consumers fairly, are sufficient to protect policyholder interests from being disadvantaged in favour of shareholders or member interests.

The 'good customer outcomes' principle of CoFI is a requirement throughout the entire lifecycle of a product or policy. This must be considered in all matters including governance, investment strategy and shareholder dividends.

The nature of UniMed's organisational structure (its policyholders are its owners), means that there is an inherent obligation to policyholders in all dealings. Insurers who operate within a more traditional commercial framework will inevitably 'actively consider' policyholder interests as part of its decision-making as to do otherwise would have long term negative commercial impact.

2.4 The Appointed Actuary

Q2.4.1 Would it be helpful for standards to: (a) set out clearer expectations for the appointed actuary's role; (b) set out the appointed actuary's place in the insurer's governance structures; and/or (c) require insurers to explicitly consider resourcing needs for the appointed actuary role?

UniMed enjoys a constructive relationship with its Appointed Actuary and considers the role of the Appointed Actuary to be clearly understood and well-practised. A formal position description is held which is subject to annual review and updated to reflect any necessary industry or regulatory amendments.

Should the RB consider standards would assist greater industry and regulatory understanding we would encourage that flexibility be given to ensure that expectations of the RB and requirements of the particular insurer (with regards to its organisational structure, size, nature and scope etc) are complementary and do not create an unnecessary compliance burden for either the insurer or the Appointed Actuary. We do not consider it necessary for standards to require insurers explicitly consider resourcing needs for the appointed actuary role as this is simply common commercial sense that is practised in the ordinary course of business.

Q 2.4.2 Would it be valuable to require insurers to have an actuarial advice framework in place under IPSA?

We consider that this should be a determination made by the insurer allowing for a proportionate and risk-based approach that takes into account the nature and composition of the business. For some insurers a sufficiently detailed position description containing any necessary regulatory responsibilities, and regular performance reviews, should suffice.

Q2.4.3 To what extent do you think that the Reserve Bank's power to remove an appointed actuary based on fit and proper requirements provides adequate incentives and sanctioning power, in light of the role that appointed actuaries play in the regulatory framework?

We consider the sanctions to be adequate however suggest that in addition to considering '*whether the person has the **qualifications and experience** reasonably expected for the position…'* (emphasis added) (RBNZ Fit and proper standard, Licensed insurers, June 2011) it would be appropriate to add consideration to the person's demonstrated capabilities.

Q2.4.4 Should the Reserve Bank impose a statutory duty on the appointed actuary to use due diligence to carry out their assigned role, enforceable with a civil pecuniary penalty?

UniMed acknowledge that the existing sanctions to remove an Appointed Actuary may be inadequate, specifically in the event that problems with, or the impact of, the actuarial advice only comes to light once the appointment has come to an end. A due diligence duty enforceable with a civil pecuniary penalty would provide

an opportunity for penalty actions in that example. We would suggest that this be an option of last resort and only considered when it not possible or not proportionate to impose the penalty of removal.

Q2.4.5 Should appointed actuaries have a duty to identify and present the interests of policyholders? If so, should that be a general duty or only one that applies in specific contexts (such as preparing the financial condition report?)

We support the objective of this proposed duty however we suggest that, from a prudential perspective, this is already being done in practice through the Appointed Actuary's review of the insurer's capital management. It is unclear what additional policyholder interests the Appointed Actuary would be expected to identify.

2.5 The Auditor

Q2.5.1 Should IPSA include a provision requiring auditors to notify the Reserve Bank if they become aware that an insurer is failing to comply with its accounting and financial reporting obligations?

Existing obligations provide plenty of independence and scope for Auditors to raise concerns. We consider that the intended outcome of this proposal is already being achieved as standard operational practices.

Should the auditor consider that the insurer was failing to comply with its obligations, that would be highlighted in the audit report provided to its shareholders/ members and the Reserve Bank. This information would also be publicly available within the insurer's published annual report.

Should this provision be introduced, definitions and examples of when this would be used would be crucial. We also strongly encourage a requirement for the auditor to raise their concerns with the insurer in the first instance, as to mitigate the risk of any misunderstandings. There is a genuine risk that directly raising concerns with the RB, which are then found as misunderstandings or points that could have been explained and vindicated by the insurer, could cause relationship breakdowns between an insurer and auditor. If experienced by multiple insurers, this could cause considerable disruption to the industry.

An allowance could be made for the auditor to present these concerns to the RB directly if the suspected non-compliance could lead to significant distress, if not investigated as a matter of urgency or there were concerns that the insurer was operating with deliberate deceit (although we would suggest that this would fall within existing 'whistle blower' requirements).

2.6 Banning orders

Q 2.6.1 Should a serious and persistent breach of statutory due diligence duties (if they were introduced) be grounds on which a court might issue an industry-wide banning order?

While we do not believe additional duties are required, we cautiously support the idea of the ability for the court to impose an industry-wide banning order for serious and persistent breaches, provided clear definitions of 'serious' and 'persistent' are documented.

2.7 A governance standard

Q 2.7.1 Do you agree that it would be appropriate for IPSA to empower a governance standard?

We support the need for clear and comprehensive Governance guidance. While we acknowledge that Standards provide the means for enforceability, we would stress that these would need to carefully designed so that adherence is proportionate and flexible so different corporate and legal structure can be accommodated within the guidance. For example, member-based organisations by nature require elected representation on the Board.

Q 2.7.2 Can you suggest any principles that should guide the drafting of empowering provisions or the design of governance standards?

It will be important to ensure that any Standard promotes Governance best practice and does not become a tick box compliance exercise.

Each organisation has the right to operate within the appropriate legislative framework, however any additional guidance cannot be so prescriptive that it prevents an organisation from choosing how it operates. We encourage any standard to be principles based and recognise that the insurer is best placed to assess its capital needs, triggers and metrics against its particular operating structure and strategic objectives.

2.8 Risk management

Q 2.8.1 Do you think it is appropriate for IPSA to empower a risk management standard? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

We support the creation of a risk management standard, with consultation on the detail and development.

It is current practice of the RBNZ to request a copy of an organisation's Enterprise Risk Management policy whenever a significant alteration has been made, which considers the risk impact of these changes on the organisations governance. We encourage this to be formalised in any proposed standard.

Q 2.8.2 Do you think it is appropriate for IPSA to empower a standard requiring an ICAAP/ORSA process? Are there any high-level issues relating to standard scope or drafting of the empowering provisions that the Reserve Bank should consider?

We consider this to be an appropriate way to ensure robust Capital Management Policies are held by all insurers.

Each organisation has the right to operate within the appropriate legislative framework, however any additional guidance cannot be so prescriptive that is prevents an organisation from choosing how it operates. We encourage any standard to be principles based and recognise that the insurer is best placed to assess its capital needs, triggers and metrics against its particular operating structure and strategic objectives.

3.0 Supervisory processes

3.1 Licensing

Q 3.1.1 Do you agree that it is appropriate for IPSA to contain a requirement for RBNZ to consult with the FMA, before the RBNZ issues or cancels an insurer licence issued under IPSA?

Sound prudential management is an integral component of good conduct and an important element of ensuring good customer outcomes. There is a natural overlap in this regard between the prudential and conduct regimes. The RB is appropriately placed to assess an insurers prudential conduct and we consider it appropriate for the RB to consult with the FMA before it issues or cancels an insurer licence. It may also be appropriate to consult with the FMA if it proposes to vary, remove, add to, or substitute any conditions of licence. Timeframes for consultation would need to be tightly controlled.

3.2 Approvals for restructuring

Q3.2.1 Do you agree with the proposal to consolidate the approval process for change of control, change of corporate form, transfers and amalgamations into a single test? Why?

We support this proposal. Consolidating approval considerations would be simpler process for the RB, aid in transparency of process and provide insurers a greater understanding of what information the RB requires. This should mitigate requests for further information and expedite the approvals process.

A more flexible approach, where the RB 'may' (rather than 'must') give consideration to certain matters, is encouraged, allowing each restructure to be assessed on its own merits, taking into account the particular circumstances and impact of the change.

Q3.2.2 Do the proposed permissible considerations cover an appropriate range of considerations or are there other matters the Reserve Bank should be considering?

The proposed permissible conditions cover an appropriately broad spectrum. To aid in a transparent and effective process, we encourage supplementary guidelines providing a more granular detail.

Q3.2.3 Please identify any issues that you believe should be governed by a 'red line' prohibition – i.e. transactions that the Reserve Bank must not approve.

We consider recorded 'red line' prohibitions should be very limited. If the permissible considerations contain a broad consideration '*of any other matters the Reserve Bank considers relevant'* there should be scope for the RB to reject transactions based on the particular circumstances. We would suggest that any 'red line' prohibitions be specific and not subjective so that these are universally understood. The example given in the consultation ('*material and unreasonable adverse effect on policyholders*') may be better dealt with under the permissible conditions ('*any impact on policyholder interests')*.

Q3.2.4 Please identify any constraints that you think should be placed on the Reserve Bank's ability to attach conditions to its approval of a restructuring.

As indicated in the consultation document, general administrative law provisions on proportionality and reasonableness should already provide adequate safeguards. Increased collaboration with the FMA should be carefully considered so that any conditions are clear and consistent across licences and are captured against the appropriate licence (i.e prudential conditions through the RBNZ and conduct conditions through the FMA).

Q3.2.5 What do you consider to be the appropriate mechanism for setting out details of the approval process: primary legislation, secondary legislation (i.e. regulations), guidelines, or other?

We consider the approvals process should be outlined in primary legislation. The RBNZ should also provide a detailed guidance document including more granular detail and examples. Such a document would be able to be regularly updated to account for changes in the sector quicker than seeking a legislative change.

Q 3.2.6 How should the Reserve Bank balance market freedom with policyholder security in assessing restructuring transactions? Do you have any comments on wording that you think would capture this balance appropriately?

Striking an appropriate balance between policyholder security and market freedom is a fundamental element of IPSA's purpose: to promote the maintenance of a sound and efficient insurance sector, and to promote public confidence in the insurance sector. The prudential security of both the insurer(s) party to the proposed transaction and the wider insurance sector needs to be at the forefront of the RB's considerations. This will naturally require consideration of market freedom. As noted in 3.2.4, general administrative law provisions on proportionality and reasonableness should already provide adequate safeguards.

Q 3.2.7 Should the requirements to consider policyholder interests be different for statutory funds than for other restructuring transactions for which Reserve Bank approval is required?

All restructuring proposals should be considered on their own merits, with the risks and impact of each transaction considered with respect to both the policyholders of the insurer(s) party to the proposed transaction and the wider insurance sector. It is inevitable that in practice a restructuring transaction involving a life insurer will entail tougher scrutiny of the long-term interests of the directly affected policyholders, however we consider this can be adequately contemplated by a flexible process referenced under 3.2.1. Guidelines in support of legislation (primary or secondary) could make it clear that more weight will be given to policyholder interests where the transaction has a real or potential impact on long term policies.

Q3.2.8 Would it be helpful for Reserve Bank guidance on approval processes to say more about how we interpret the requirement to consider policyholder interests?

As noted in our responses at 3.2.5 and 3.2.6, we encourage clear guidance on how policyholder interests will be considered as part of the restructuring approvals process. Ideally this guidance would include examples and be regularly reviewed and updated.

Q 3.2.9 Should approval processes include a requirement for us to consult with the FMA as part of our approval decision-making?

Assuming the party(s) to the proposed restructuring are dual licensed, we support consultation with the FMA as part of the RB's restructuring approvals process. Our comments under 3.1.1 are equally applicable here.

Q3.2.10 Do you agree that section 44 should be extended to apply to the acquisition of insurance business by a licensed insurer from a non-licensed overseas insurer?

We agree with this proposal.

Q3.2.11 What do you think the appropriate threshold should be for a change of control to be notified to the Reserve Bank? Why?

We consider the appropriate threshold to remain at 50%. Guidance should emphasise, with examples, that this includes acting in concert.

Q3.2.12 Please comment on the appropriateness of: (a) replacing the fixed 20 working day timeframe for approvals with a 'within a reasonable time' timeframe, or (b) extending that timeframe to 45 working days. Please provide any other comments or options you consider appropriate.

We support the option of changing the approvals timeframe to 'within a reasonable timeframe', assisted by guidelines specifying likely timeframes for different types of transactions. This best reflects the uniqueness of each transaction, recognising that more complex transactions or transactions which pose a greater risk to policyholder interests will predictably take longer to assess. We encourage the RB providing an indicative timeframe to the applicant, with regular communication including a reassessment of that timeframe if the circumstances require it.

4 Data and disclosure

4.2 A data and disclosure standard

Q4.2.1 Should IPSA empower a data and disclosure standard that could set out disclosure requirements, including data that should be made available to the public?

We cautiously support the creation of a Data and Disclosure Standard detailing what types of insurer information will be kept secure by the RB, and which may be published or otherwise shared (and in what circumstances. We recognise that this would provide greater transparency for when the RB might publish individual insurers data under 135 (2) (c) and acknowledge that it would be sensible to amalgamate the existing IPSA information gathering powers.

However, we feel that considerable industry and market engagement will be needed in respect of any significant extension for which an insurers prudential information may be published. Care will need to be taken to ensure that the information has a real benefit for consumers and is not unduly onerous on insurers or the RB to provide and maintain.