

Review of the Insurance (Prudential Supervision) Act 2010.

Summary of submissions for consultation on
governance, supervisory processes and disclosure

27 September 2023



Reserve Bank
of New Zealand
Te Pūtea Matua



Introduction

In November 2022, the Reserve Bank of New Zealand - Te Pūtea Matua issued a consultation paper on governance, supervisory processes and disclosure as part of its review of the Insurance (Prudential Supervision) Act 2010 (IPSA). The consultation closed on 21 February 2023.

The consultation discussed:

- governance, key officers and control functions;
- supervisory processes; and
- data and disclosure.

In total, we received twelve submissions from industry associations and individual insurers. We would like to thank everyone who took the time to make submissions.

This document provides a summary of the feedback received. We will also publish submissions in full alongside this summary.

We do not provide a direct response to the feedback in this document because we are publishing it at the same time as an 'Omnibus Consultation' for the IPSA Review. The Omnibus Consultation sets out our policy preferences on the issues discussed in the *Governance, supervisory processes and disclosure* consultation and explains how we have responded to stakeholder feedback.¹

Governance, key officers and control functions

Fit and proper

Submitters were generally against having a requirement for licensed insurers to obtain Reserve Bank approval prior to appointing a director or relevant officer (and were broadly against extending fit and proper requirements to senior managers), though they understood that our intent was to better align with International Association of Insurance Supervisors core principles.

Submitters were concerned that Reserve Bank pre-approval might duplicate insurers' own internal processes, adding time to the recruitment phase. If the Reserve Bank did go ahead with expanding the scope of the fit and proper regime, submitters argued that approval criteria should be clear and transparent, and timeframes should be specific and timely, reducing the burden as much as possible.

Submitters had mixed views on whether insurers should have a duty to inform the Reserve Bank if they became aware of information that might reasonably cast doubt on a director's or relevant officer's ongoing fit and proper status. Those in favour agreed that the current IPSA clause is outdated, and the Reserve Bank should be informed as soon as is practically possible. Those against felt that 'might reasonably cast doubt' was too vague, creating a risk of over-reporting and/or a legal risk where information turned out to be incorrect.

¹ Section 6 of the Omnibus Consultation discusses governance, key officers and control functions. Section 7.3 discusses data and disclosure. Section 8.3 discusses supervisory approvals processes. The Omnibus Consultation can be found here <https://www.rbnz.govt.nz/have-your-say/review-of-the-insurance-prudential-supervision-act-2010>

Directors' duties

Submitters broadly felt that current directors' duties under IPSA are appropriate. They were concerned that extending directors' duties to include a duty to exercise due diligence to ensure compliance with prudential obligations might lead to an uncertain board environment, undermine decision making, and impose unnecessary cost.

The consultation also asked whether directors or insurers should be obliged to consider policyholder interests or give priority to policyholder interests ahead of those of shareholders or members, but submitters felt that this would not be straightforward as it may be overly restrictive.

The appointed actuary

Most submitters were in support of a standard that set out clear expectations for the appointed actuary's role.

Submitters generally argued against setting out the appointed actuary's place in the insurer's governance structures and requiring insurers to explicitly consider resourcing needs for the appointed actuary role. It was noted that insurers differ in size and structure, so some requirements are difficult to standardise.

Submitters were supportive of having an actuarial advice framework, noting similarities with Australia.

In light of the role that appointed actuaries play in the regulatory framework, submitters felt that the Reserve Bank's power to remove an appointed actuary based on fit and proper requirements provides adequate incentives and sanctioning power.

Submitters were broadly against the Reserve Bank imposing a statutory duty on the appointed actuary to use due diligence to carry out their assigned role. They felt it might have unintended consequences and discourage actuaries from taking up appointed actuary roles at insurers.

Lastly, there was little support for appointed actuaries to have a duty to identify and present the interests of policyholders. Stakeholders felt it was not entirely clear what was meant by 'policyholder interests' in this context – noting they can vary and be difficult to quantify.

The Auditor

Submitters were not supportive of IPSA including 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. They felt that existing audit requirements are robust and that there might be uncertainty as to when notification obligations would arise.

Banning orders

Submitters had mixed views on whether a serious and persistent breach of statutory due diligence duties (if they were introduced) should be grounds on which a court might issue an industry-wide banning order.

A governance standard

Submitters were broadly supportive of IPSA having a provision to empower a governance standard. They noted that a standard should be subject to consultation and consider proportionality to account for insurers of different size and complexities.

Risk management

Submitters were broadly supportive of IPSA having a provision to empower a risk management standard, as well as a standard requiring an internal capital adequacy assessment process - ICAAP/ORSA. Again, proportionality should be considered in any potential standard. Consideration should also be given to how the range of standards interact, taking care to ensure requirements are not duplicated.

Supervisory processes

Licensing

Submitters were broadly supportive of IPSA containing a requirement to consult with the FMA before the Reserve Bank issues or cancels an insurer's licence. This would be consistent with requirements placed on the FMA under CoFI (the new Conduct of Financial Institutions regime). However, remits between the Reserve Bank and the FMA should be clear and account for factors relevant to each regime.

Approvals for restructuring

There was broad agreement with the proposal to consolidate the approval process for change of control, change of corporate form, transfers and amalgamations into a single test. Submitters felt there would be less administrative burden and a reduction in the disproportionate amount of work required for low-risk change activities as a result. The new process should be transparent and be tailored to type of transaction given differences and varying levels of complexity.

The consultation also asked a range of questions related to the new process. We summarise feedback related to these questions below:

- Submitters generally agreed that the proposed permissible considerations covered an appropriate range of considerations. Submitters asked for further detail around how permissible considerations would impact the application process and decision-making criteria. They argued that a new process should be accompanied with guidance to clarify these details.
- Submitters felt that no issues should be governed by a 'red line' prohibition (i.e., transactions that the Reserve Bank must not approve). They argued the Reserve Bank should start the application process with rebuttable presumption of approval and only deny for good reasons. Submitters felt the Reserve Bank should be required to identify particular prudential concerns for declining an application or imposition of conditions and insurers should have the right to respond or appeal.
- Most submitters considered that the appropriate mechanism for setting out details of the approval process would be primary legislation, supplemented by guidance to allow flexibility.
- The Reserve Bank should balance market freedom with policyholder security in assessing restructuring transactions – submitters suggested that a permissive approach would be most appropriate for this. This was on the basis that this would allow actions to take place in a timely manner and gives more flexibility, whereas a mandatory approach may lead to adverse outcomes, especially if insurers are under financial distress, and may lead to an unnecessarily slow approval process in instances where there likely won't be material

impacts on policyholder security.

- Submitters had mixed views on whether the requirements to consider policyholder interests should be different for statutory funds than for other restructuring transactions for which approval is required. Some submitters felt they should be the same, as the materiality threshold should take account of any differences between different types of insurance. Others felt they should differ, noting that the nature of the business covered by statutory funds (i.e., their long-term nature) may justify different considerations (i.e., more difficulty in moving between insurers).
- In general, stakeholders felt that guidance on how the Reserve Bank will interpret requirements that consider policyholder interests would be helpful.
- Submitters had mixed views on whether approval processes should include the requirement for the Reserve Bank to consult with the FMA as part of the decision-making process. Some suggested that it seems to be inconsistent as CoFI does not require FMA to consult with the Reserve Bank when a change is requested to a CoFI licence. It would also likely add time to the approval process, and it may be more appropriate for the Reserve Bank to go through its process before the FMA considers conduct implications. There was some support however, as it would increase transparency throughout the consultation process between the Reserve Bank and the FMA.
- Submitters agreed that the approval process for transfers and amalgamations should be extended to apply to the acquisition of insurance business by a licensed insurer from a non-licensed overseas insurer.
- The consultation also asked what the appropriate threshold should be for a change of control to be notified to the Reserve Bank. Submitters generally preferred the current arrangements which set the threshold at 50% of voting rights.
- Lastly, the consultation asked whether the current timeframe of 20 working days for approvals be replaced with a “within reasonable time” timeframe or extended to 45 working days. Submitters had mixed views on this. Some noted that different types of applications may take different lengths of time and at times 20 working days may not be long enough to assess an application. However, it was also noted that the current timeframe gives clarity and “within reasonable time” is too open ended and may cause delays for simple transactions and create uncertainty, and that extending to 45 days outright is too long for simple transactions.

Data and disclosure

A data and disclosure standard

Submitters were broadly supportive of IPSA empowering a data and disclosure standard that could set out disclosure requirements, including data that should be made available to the public. They emphasised the need to consult transparently on any new disclosure requirements and to bear in mind the burden disclosure places on insurers.