Reserve Bank of New Zealand
Te Pūtea Matua

Review of the Insurance (Prudential Supervision) Act 2010

Summary of feedback on the Omnibus Consultation

5 March 2025

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Privacy Policy - Reserve Bank of New Zealand - Te Pūtea Matua (rbnz.govt.nz)

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1 Introduction

In September 2023, the Reserve Bank of New Zealand – Te Pūtea Matua issued an Omnibus Consultation[1], bringing together a full set of proposals for amending the Insurance (Prudential Supervision) Act 2010 (IPSA). The consultation was open from 27 September to 12 December 2023. We intend this to be the final policy consultation. An exposure draft of an amendment Bill is expected to be publicly released, likely in late 2025, should the Minister of Finance decide to take a set of proposals to Cabinet.

Prudential supervision of insurers is about promoting sound insurers so they can pay their policyholders when they need to, in addition to promoting public confidence in the sector. This requires insurers to be well run and in a solid financial position. Prudential regulation encourages insurers to make careful and conservative assessments of the risks they are insuring and the reserves they need to hold. A sound insurance sector directly and indirectly contributes to the soundness and stability within the financial system, which promotes the prosperity and well-being of New Zealanders.

In 2016, we began the review of IPSA (the IPSA Review) with the publication of the terms of reference[2]. Over the course of the IPSA Review, there have been significant changes to the Reserve Bank's governing and prudential legislation, as well as important external reviews of the Reserve Bank's approach to insurance regulation – the IMF's Financial Sector Assessment Programme (FSAP) and the Trowbridge-Scholtens report into CBL Insurance Ltd . The most important purpose of the changes we are proposing is to ensure that our insurance legislation can support our evolving approach to supervision across the sectors we regulate (deposit takers, insurers and financial market infrastructures). The proposed changes will help underpin the more proactive and intensive approach to supervision that the Reserve Bank is employing.

The proposals, as outlined in the Omnibus Consultation, are wide-ranging but can be summarised under four main themes:

- supporting a more proactive and intensive approach to supervision;
- greater oversight of overseas insurers;
- enhancing policyholder security; and
- refining the statutory purposes and scope of the legislation.

The Omnibus Consultation built on the five previous consultations to lay out a complete and focused set of proposals for amending IPSA, with a few new details and proposals being introduced. It devoted greater space to issues that stimulated greater debate in previous consultations and referencing other issues relatively briefly. We have thoroughly considered the feedback offered by stakeholders; this is reflected in each step of the IPSA Review. Proposals have been reassessed and some have been adjusted in light of the feedback received. There was a greater amount of feedback on certain issues, particularly the areas with new proposals or further detail. The main new areas were:

[1] IPSA Omnibus Consultation Paper (rbnz.govt.nz)
[2] In 2023, Cabinet agreed to expand the terms of reference and include IPSA purposes and principles.

- a discussion of some modest changes to IPSA's purposes and principles to create greater alignment with the Reserve Bank's other legislation (section 2.2);
- some additional detail on our proposals for supervision of corporate groups headquartered in New Zealand (section 2.5);
- a more focused discussion on whether branches of overseas insurers should be asked to hold assets in New Zealand (section 3.3);
- some additional policyholder protection measures to offset our proposal to remove statutory fund requirements for yearly renewable term life business (sections 5.3 - 5.4)

This consultation and summary of submissions may be read as standalone documents. However, readers may find it useful to refer to earlier consultations and feedback for more background and further detail.

Previous consultation and year	Links to relevant documents	Abbreviation used in this consultation document
2017 Issues paper	Consultation document Feedback statement	Not referred to
2020 Scope of the Act and Overseas Insurers	Consultation document Feedback statement	C1
2021 Policyholder Security	Consultation document Feedback statement	C2
2022 Enforcement and Distress Management	Consultation document Feedback statement	C3
2022 Governance, Supervisory Processes and Disclosure	Consultation document Summary of Submissions	C4
2023 Omnibus consultation	Consultation document	Omnibus consultation

In total, we received 31 submissions on the consultation paper. These submissions came from a range of stakeholders, including insurers, industry associations, professional bodies and individuals. We also hosted a well-attended public webinar for additional engagement with stakeholders. This document provides a summary of the feedback we received. We will also publish the full submissions alongside this summary.

We would like to thank everyone who took the time to make submissions. Feedback is a valuable and important part of the policy development process, and we appreciate the time and thought that industry has dedicated to this work.

2 Purposes, scope and regulatory boundaries

Refer to C1 for additional information on sections 2.3, 2.4, and 2.5.

2.2 Statutory Purposes and Principles

Proposal in consultation paper

We proposed to make changes to IPSA's purposes and principles[3], as considerable change to the Reserve Bank's legislation and overall statutory objectives has ensued since IPSA's inception in 2010. The consultation noted that IPSA's existing statutory purposes and principles remain broadly fit for purpose but invited discussion of some potential changes to the nuance of these clauses, particularly:

- Whether IPSA's purposes should explicitly reference the Reserve Bank's broader purpose and financial stability objective under the Reserve Bank of New Zealand Act 20214 (**RBNZ Act**)?
- Whether it should remain a purpose of IPSA to promote the maintenance of a sound and efficient sector – i.e., does the promotion of 'efficiency' remain an important and desirable legislative purpose?
- Whether a reference to access to insurance is needed?
- Whether the purposes of IPSA should refer to promoting the soundness of the insurance sector of the soundness of each insurer?
- What role policyholder interests should play in IPSA's purposes and principles?

Submission feedback

There was a significant amount of feedback on this proposal. Respondents' feedback was generally in consensus.

Some respondents noted that there is legal risk involved in changing statutory purposes and principles. The purpose and principles clauses have a pervasive impact on legal interpretation so changes might alter existing settled law and cause unintended consequences.

Respondents did not generally have strong views about whether or not to reference the Reserve Bank's broader purpose. However, some felt that prudential supervision of insurance would do little directly to 'promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy.'

Several respondents were keen to point out the difference between the insurance and banking sectors, arguing that insurance failure is less likely to be disruptive to the financial system. Because of this, they questioned whether IPSA was well-aligned with the RBNZ's financial stability objective of 'protecting and promoting the stability of New Zealand's financial system' (see the RBNZ Act section 9(1)(b)).

[3] IPSA Sections 3 & 4
[4] RBNZ Act Sections 3 & 9

All respondents wanted to retain efficiency in IPSA's purposes, primarily as a counterweight to 'soundness'. Some noted that this needs to be tailored to New Zealand's insurance industry and should be thoughtfully considered when developing proposals that could impact competition, costs, or complexity.

All respondents wanted to maintain a focus on the soundness of the sector, rather than individual insurers. Some expressed concern that a focus on individual insurers might undermine risk-based supervision and potentially imply an implicit guarantee to policyholders. They also noted that IPSA is not a zero-failure regime, and insurers have limited contagion risk so a statutory purpose tied to the soundness of individual insurers would be unnecessary.

Most respondents were against any explicit extension of language around policyholder protection. Some were concerned that policyholder protection was too broad, with particular risk of blurring jurisdictional boundaries with the Financial Markets Authority (FMA). Some argued that IPSA already contains mechanisms that protect policyholders so did not need language about it in the purposes statement. Multiple respondents went on to say that, if we were to address this issue, they would prefer a reference to 'policyholder security'.

All respondents were against adding provisions to promote 'access to insurance'. Some felt this did not fit well with the RBNZ's mandate and could be better addressed by individual insurers or another regulatory entity such as the Commerce Commission. Others felt that not everyone wanted or needed access to insurance and were concerned about pressures on pricing or legitimate underwriting decisions that could be counterproductive to financial stability.

2.3 Definition of contracts of insurance

Proposal in consultation paper

We proposed maintaining the current definition of 'contract of insurance', with one small modification: the introduction of a 'deem in' power to allow the Reserve Bank to declare that some types of business are insurance contracts, so long as they meet the broad definition[5]. This power is intended to provide clarity and transparency that certain 'boundary' products are insurance.

Submission feedback

Respondents were broadly supportive of the proposal. They were in support of retaining the current definition of contract of insurance, with two submissions suggesting refinements for a clearer definition. This included a request to consider a new provision for restricting the use of the term 'insurer' to entities who are directly subject to IPSA.

Respondents strongly supported the introduction of a 'deeming in' power to increase clarity and certainty for industry participants. However, this support was contingent on the development of appropriate constraints on the scope of power. Respondents advocated for a consultation requirement between the Reserve Bank and those impacted by the declaration, followed by ample communication with industry and the potential for an appeal process.

[5] Set out in IPSA section 7(1) and 7(2).

Submissions suggested that the power should be comparable to that of the FMA under the Financial Markets Conduct Act 2013[6] (FMCA).

2.4 Definition of 'carrying on business in New Zealand'

Proposal in consultation paper

We proposed two changes to the definition of 'carrying on insurance business in New Zealand'. The first change would be to remove the current provision that says only insurers *with New Zealand policyholders* should be considered to be carrying on business in New Zealand. This means that all New Zealand-incorporated insurers would need to be licensed, regardless of whether they only issue contracts to overseas policyholders. Secondly, we proposed explicitly excluding overseas-incorporated captive insurers and overseas insurers only carrying out reinsurance business from licensing requirements.

Submission feedback

Respondents were broadly supportive of the proposed changes to the definition. Respondents agreed that the proposal would remove ambiguity concerning the requirement of a licence, and would offer an appropriate balance between risk mitigation and regulatory obligations.

Submissions supported the proposal to amend the regulatory requirements for overseas-incorporated captive insurers and reinsurers. They noted that relieving these insurers from licensing requirements would encourage them to conduct business in New Zealand, recognising our reliance on overseas insurers. Some respondents made suggestions to refine the amendment, for example, the overseas captive exemption should only apply where the captive is regulated and licensed in its home jurisdiction. One respondent suggested the Reserve Bank use the powers available to them under IPSA[7], to exclude insurers on a case-by-case basis, to avoid the risk of having a definition that is not synonymous with the intended exceptions.

Two submissions noted that caution should be used when exempting reinsurers or their branches. They suggested further targeted consultation with these stakeholders or additional risk mitigation measures, such as aggregate limits.

2.5 Group supervision – licensing non-operating holding companies

Proposal in consultation paper

We proposed amending IPSA so that we have the ability to require licensing for a non-operating holding company (NOHC), for corporate insurance groups headquartered in New Zealand (whether operating only domestically or across borders).

Submission feedback

Most respondents were supportive of a requirement to introduce an option for the Reserve Bank to develop a licensing regime for non-operating holding companies. However, some entities that expected to be affected by the provisions argued that they were unnecessary and went beyond

[6] Financial Markets Conduct Act 2013 No 69 (as at 16 March 2024), Public Act – New Zealand Legislation
[7] Section 9 of IPSA empowers the Bank to declare that a person is not carrying on insurance business in New Zealand in certain circumstances.

what was required. One respondent requested further detail for the definition of NOHCs, as they felt the perimeter around included entities was not clearly defined.

A few respondents disagreed with the proposal for licensing requirements and felt it would create unnecessary costs. One respondent suggested an alternative requirement for entities to provide the Reserve Bank with updated group membership and structure over time, as opposed to licensing which requires upfront costs. Two respondents suggested that if the proposal proceeds, it should not include entities that are already licensed and regulated by the Reserve Bank. Many requested an opportunity for consultation on an exposure draft.

3 'Overseas' insurers – branches and subsidiaries

Refer to C1 for additional information on this chapter.

3.2 Subsidiaries

Proposal in consultation paper

We proposed that any risks that intra-group relationships might create for subsidiaries of foreign-owned groups could be dealt with through: an outsourcing standard; a connected exposures standard; and dividend restrictions coming into force as insurers' capital declined.

We also proposed introducing outsourcing and connected exposures standards for other cases (see section 6.2 below).

Submission feedback

Respondents were mostly supportive of the proposals, with some questions regarding details of the standards. Some submissions stated in order to provide a full set of feedback, they would require further detail on scope, flexibility, and proportionality. These respondents requested consultation on an exposure draft with more detail if this proposal was to proceed.

Respondents wanted to ensure there were appropriate safeguards and transparency around any dividend restrictions. Some respondents felt that dividend restrictions would not be appropriate until insurers were in breach of their prescribed capital requirement (PCR) (the required amount of capital insurers need to hold so that it can meet its obligations to policyholders) and would not be necessary once the PCR was breached (as 'no insurer would issue dividends in this situation').

Respondents argued that any outsourcing standard should:

- be cognisant of the differences between banks and insurers and avoid a costly regime like BS11[8], which applies to some New Zealand banks;
- consider the efficiency advantages of group structures and not unnecessarily undermine those;
- consider compatibility with overseas (particularly Australian) practices and requirements; and

[8] Outsourcing policy for banks - Reserve Bank of New Zealand - Te Pūtea Matua

- include clear materiality provisions to avoid capturing, for example, panel beaters or builders.

Some respondents urged caution over the potential for connected exposure rules to undermine the efficiency gains delivered by group structures.

3.3 Branches of overseas insurers

Proposal in consultation paper

We proposed some risk reduction measures to address the regulatory, supervisory, and crisis management challenges associated with the branches of overseas insurers, without undermining the benefits branches provide to New Zealand. These include local asset holding requirements for branches, a due diligence duty for the NZ Chief Executive Officer (CEO), and removal of the licensing requirement under IPSA for overseas reinsurers. We were particularly interested in stakeholders' feedback on the local asset holding requirement, as we continued to consider the costs and benefits of this proposal.

Submission feedback

Respondents had widely varying views on both the due diligence and local asset holding requirements; opinions were largely correlated with entities' own legal form, and thereby the impact the proposal would likely have on their business.

The arguments raised by each side in response to the assets in New Zealand requirements broadly echoed those set out in the consultation.

Some respondents felt that assets in New Zealand requirements would deliver increased policyholder security and greater competitive neutrality, with some noting that policyholder preference in insolvency would otherwise be difficult to deliver effectively for branches.

Some respondents supported the purpose, however, requested more information on how it would be applied and the impact it would have on New Zealand's insurance market. It was suggested that assets in New Zealand should be decided on a more discretionary basis, and that the $3 million threshold was too low.

Others suggested the costs for branches of implementing assets in New Zealand may deter entry or cause overseas insurers to leave the market, they note this a concern due to the value of branches in providing additional choice for New Zealand consumers. They also note that this requirement may undermine the benefits of a branch structure, which allows access to large well-diversified overseas insurers and delivers efficiency savings branches. Some respondents preferred conditions of licence on specific or affected insurers under existing powers.

Some respondents stated that the CEO due diligence duty is an unnecessary requirement due to regulatory measures already in place under IPSA and home jurisdictions. Additionally, some raised concerns that it would deter candidates from taking these roles or drive CEOs to focus on compliance rather than key oversight obligations. One entity disclosed they do not have a New Zealand CEO due to their structure. These respondents stated that the Reserve Bank should instead rely on fit and proper expectations set by IPSA, and if the proposal proceeds, they request that reasonable reliance defences be included.

Other respondents supported the introduction of a due diligence duty for CEOs as they felt it would provide a more equitable environment respective to the regulations they face as a branch in Australia. Some suggested that the obligation sit with directors rather than CEOs.

Respondents were supportive of the amendment to remove the licensing requirement for reinsurers, however some noted that 'reinsurer' is not currently defined in IPSA.

4 Solvency and ladder of intervention

Refer to C2 and C3 for additional information on this chapter.

4.2 Setting solvency requirements and supervisory adjustments

Proposal in consultation paper

We proposed that the prescribed capital requirement (PCR), that is, the required amount of capital insurers need to hold so that it can meet its obligations to policyholders, should apply to non-exempt insurers, without the need for a specific licence condition. We also proposed that the Reserve Bank should have the power to impose supervisory adjustments to the way the solvency calculation is carried out.

Submission feedback

Most respondents that commented had concerns about a power for the Reserve Bank to require insurers to carry out solvency calculations in a particular way. Some argued that solvency calculations were the responsibility of the insurer and could be better assessed by their appointed actuary or management. Others were concerned that, in contrast with the transparent rules-governed mechanisms of the solvency standard, an over-ride power was too discretionary and potentially arbitrary. Most respondents also felt that there should be a mechanism to challenge the Reserve Bank's views other than judicial review, ideally through a sort of independent expert tribunal.

4.3 Solvency-related reporting

Proposal in consultation paper

We proposed not changing the requirement to produce the financial condition report (FCR) and appointed actuary's report required under section 78 (otherwise known as 'section 78 reports'). We also noted we would consider the appropriate instrument to set out requirements for financial condition reports, as part of producing any exposure draft.

We proposed prescribing a minimum solvency margin of zero be required by default, without the need to specify it in a licence condition. Licence conditions could then be used to adjust the default margin to cater for non-standard situations.

Submission feedback

Respondents were comfortable with a default solvency margin of zero being imposed without the need for it to be included in licence conditions.

Although some continued to question the value of section 78 reports, others supported them, and most did not feel strongly on making any changes.

Most respondents who expressed a preference felt it would be helpful to separate reporting elements such as the FCR from the solvency standard, in view of the length and complexity of the standard.

4.4 Ladder of intervention, solvency and statutory powers

Proposal in consultation paper

We proposed introducing two solvency control levels, the prescribed capital requirement (PCR) and the minimum capital requirement (MCR). Four capital-related triggers would be arranged for Reserve Bank powers to be unlocked sequentially as capital levels decline, enabling an escalating supervisory response.

The PCR is designed to be sufficient surplus capital for an insurer to hold so that it can meet its obligations to policy holders. While the MCR, is the minimum level of surplus capital that is necessary to be considered viable.

Submission Feedback

Respondents supported the general principle of a ladder of intervention. Several respondents had concerns around using a 'likely to breach' approach for solvency capital triggers and sought a clearer definition of this measurement in relation to the PCR or MCR. Some also suggested the board should be responsible for reporting breaches as opposed to the appointed actuary and auditor.

Some respondents felt that powers such as administration and statutory management should not be available until after the MCR was breached. One respondent suggested that there should be four control levels, allowing a more granular unlocking of powers. They suggested recovery plans should not be available until well below the level of the PCR.

One respondent expressed broader concerns about powers being unlocked at particular capital levels given that solvency reporting is backward-looking and may be highly contested in some cases.

Several respondents felt that, if legislation only provided two control levels, it would be important for the Reserve Bank to publish policy setting out when and how it would expect to use the powers available to it.

5 Policyholder security and statutory funds

Refer to C2 for additional information on this chapter.

5.2 No policyholder guarantee scheme at this time

Proposal in consultation paper

We did not recommend implementing a policyholder guarantee scheme for New Zealand. An assessment of the case for a scheme was not strong enough to justify the costs of implementation and ongoing administration at the present time, however we did not rule out reconsidering this issue in the future.

Submission feedback

Respondents agreed that a policyholder guarantee scheme is not necessary.

5.3 Statutory funds and 'pure risk' life policies

Proposal in consultation paper

In response to previously expressed industry concerns about the regulatory burden imposed by statutory funds, we proposed that yearly renewable term (YRT) business might be removed from the statutory fund regime, since it had no savings element. However, we noted potential difficulties in defining the boundary of yearly renewable term business and asked for input on appropriate definitions.

We did not propose extending statutory funds to any general insurance lines or to health insurance.

Submission feedback

Most respondents argued that this change would not, in fact, be beneficial. They said that restructuring statutory funds in response to any change would be costly and operationally complex. They noted that YRT business and level term business was closely connected and difficult to separate. There would be administrative costs to restructuring, such as informing all policyholders. They also stated that statutory funds would become smaller and less diversified. Some respondents said that removing YRT business would result in increased capital requirements for remaining statutory funds.

Some respondents suggested that we make the removal of YRT business from statutory funds optional, so insurers can maintain the status quo if desired.

Most respondents felt that it was sensible not to extend statutory funds to general or health insurance, though one respondent disagreed, arguing it was logical to add health insurance to statutory funds.

5.4 Enhanced policyholder security

Proposal in consultation paper

We proposed the potential of introducing the following policyholder protections:

- protection of the 'underwriting asset' involved in YRT and health policies;
- policyholder preference in insolvency;
- tighter restrictions on investments in related parties for all insurers;
- an ability for the court to order that some of a civil pecuniary penalty imposed on key officers should be paid to policyholders;
- a requirement for policyholders' contractual rights to be documented where they are changed as a result of a section 53 (s.53) transfer.

Submission feedback

Most respondents felt the 'underwriting asset' proposal was extremely difficult to operationalise and not very realistic. Particularly, if it involved determining an economic value of the benefit provided to individual policyholders; given a lack of information and the subjectivity of assessing individual circumstances.

Most respondents were supportive of extending policyholder preference in insolvency to general insurers. However, several respondents questioned how preference might apply to overseas insurers and noted that preference may further disadvantage policyholders of overseas branches. One respondent argued it was unreasonable and unnecessary to single out insurance policyholders for preference above other creditors, noting that other industries do not offer such preference to customers. They also note that it would be difficult to distribute claims equally since not all claims could be paid immediately.

Respondents were generally supportive of the tighter restrictions on related parties' investments, however some noted it is difficult to offer comprehensive feedback without further detail, as they were concerned about what this would look like in practice. Two submissions expressed concern about the potential impact of deterring overseas insurers, and suggested they may be exempt from this requirement.

Respondents had concerns about a proposal to allow courts to specify that some part of the civil pecuniary penalties imposed on directors might be paid to policyholders. Some were concerned that this could allow the courts to infer a direct personal duty owed by directors to policyholders, which they argue goes against the principle of directors' duties. Some of these respondents referenced aspects of the *Mainzeal* case[9], which they saw as an inappropriate court willingness to infer a director duty toward creditors. Others felt it would complicate sentencing and upset the convention that penalties were for restitution, rather than deterrence. Several respondents argued that determining how such payments were to be distributed amongst policyholders would be fraught with difficulty.

[9] 2023-NZSC-113.pdf (courtsofnz.govt.nz)

Most respondents agreed that, if policyholder rights were changed under a s.53 transfer, policyholders should be notified but questioned whether this needed to be in statute as it could already be imposed as a condition for approval of the transfer.

6 Governance, risk management and relevant officers

Refer to C4 for additional information on this chapter.

6.2 New standards for governance, risk management and related issues

Proposal in consultation paper

We proposed empowering standards that allow the Reserve Bank to introduce rules covering:

- corporate governance;
- risk management;
- Internal Capital Adequacy Assessment Process (ICAAP) / Own Risk and Solvency Assessment (ORSA), to the extent those rules are necessary on top of what is already in the solvency standard;
- outsourcing policy; and
- connected / related party exposures.

The detailed content would be assessed and consulted on at a later stage, if progressed.

Submission feedback

All respondents were broadly comfortable with introducing a wider range of standards under IPSA. However, they proposed a range of considerations or safeguard in developing and implementing standards. Several respondents noted that they would like to review the proposed scope of standards set out in an eventual exposure draft, with long lead times for implementation. They suggested that when developing the standards, the Reserve Bank should consider proportionality and relevant interactions with standards imposed by overseas authorities.

One respondent invited us to consider whether all breaches of standards should result in liability for civil pecuniary penalties.

6.3 Fit and proper regime

Proposal in consultation paper

We proposed three changes to the existing fit and proper requirements:

- including the chief risk officer (CRO) or equivalent in the list of 'relevant officers' under IPSA that are subject to fit and proper requirements;
- a requirement for licensed insurers to seek approval from the Reserve Bank before the appointment of relevant officers; and
- a requirement for insurers to notify the Reserve Bank if they became aware of information that might reasonably cast doubt on the fitness and propriety of a relevant officer.

Submission feedback

Respondents were generally comfortable with the inclusion of the CRO under the definition of 'relevant officers', however there were some concerns. Most respondents suggested that we should define CRO as 'the person ultimately responsible for risk management within the organisation', since this title may not be consistently used across entities. One respondent was concerned that small insurers might not have this CRO-type position and invited us to consider how to deal with this situation. Another respondent noted that their relevant officers are already subject to these regulatory requirements and should not be subject to duplicate processes or fees. One respondent argued that this change would incentivise insurers not to appoint such a person, which would be counterproductive for governance. Another respondent was opposed to any executive offers being included as relevant officers, preferring a clear separation between executives and board members.

Respondents continued to have strong concerns about a pre-approval process. They were primarily concerned about how the timeframe for approvals would interfere with recruitment processes, especially for smaller entities. Respondents argued that the Reserve Bank's existing power to challenge an appointment is sufficient, while the costs and complexities of pre-approval would outweigh the benefits. Some also felt that the pre-approval requirement blurred the boundary between the Reserve Bank's and Board's responsibilities, while also affecting the accountability of shareholders in appointing a director. Some respondents suggested that the Reserve Bank consider a pre-notification obligation with deemed approval after a fixed period of time, during which objections could be made if necessary.

Respondents had some apprehensions about notification requirements. Some entities were concerned about conflicting duties between this requirement and their human resource relationship with employees, including privacy issues. They noted that the requirement was ambiguously framed and appeared to require notification immediately, which may cause unwarranted harm to an individual's reputation if accusations are made too quickly and without certainty. If the proposal proceeds, one respondent requested clarification of what would happen if the Reserve Bank and an insurer reached different conclusions about a relevant officer.

6.4 Directors' duties

Proposal in consultation paper

We proposed introducing a new duty for directors of New Zealand-incorporated licensed insurers and CEOs of overseas licensed insurers, to exercise due diligence to ensure that the insurer complies with requirements under IPSA. A breach of the duty may be sanctioned with a civil pecuniary penalty.

Submission feedback

Most respondents were opposed to these duties. Many felt they were unnecessary since directors already have a wide range of legal duties that keep them accountable. Some respondents questioned what benefit this requirement would add in relation to existing duties under the Companies Act 1993 or IPSA. Respondents expressed concern that a due diligence duty to ensure compliance with prudential regulation would encourage directors to be involved in minutiae,

rather than exercising their proper more strategic oversight role. They were also concerned that it may act as a deterrent, dissuading qualified candidates from taking up directorships. A few respondents argued that directors should not have any form of personal liability or duty to policyholders. Respondents suggested that if this proposal was to proceed, explicit detail and appropriate safeguards need to be included.

The feedback was divided on whether equivalent duties should be placed on the branch CEO in the case of oversea insurers. Some respondents agreed that this was an appropriate requirement, while others suggested that duties, if any were imposed, should be placed on directors.

6.5 Actuarial advice standard and appointed actuary duties

Proposal in consultation paper

We proposed that IPSA empowers an actuarial advice standard which would:

- require licensed insurers to develop and document their own actuarial advice framework, setting out when actuarial advice was required for internal decisions; and
- set out clearly the appointed actuary's duties under IPSA in a single document (potentially cross-referring to detail contained in other standards).

It was also proposed that IPSA should impose a duty on appointed actuaries to exercise due diligence in their performance of the duties required of them under the actuarial advice standard.

Submission feedback

The large majority of respondents were in favour of introducing an actuarial advice standard that would set out expectations of an appointed actuary clearly and transparently, and enable insurers to develop a clear statement of actuarial practice. Some considered it unnecessary, stating that insurers can impose their own standards for actuary advice without requiring a framework. If the standard proceeds, respondents did not want a requirement for appointed actuaries to have a particular place in the governance structure, for example reporting directly to the CEO.

Most respondents were against imposing a personal due diligence duty on appointed actuaries to meet the relevant requirements set out in such a standard. They argued that this was unnecessary given existing professional requirements and adequate protections. They were also concerned that it would deter actuaries from taking up appointed actuary positions.

7 Disclosure and reporting requirements

Refer to C2 and C4 for additional information on this chapter.

7.2 Ratings and solvency disclosure

Proposal in consultation paper

We proposed expanding the requirements on disclosing overseas policyholder preference, so it is not confined to the event of insolvency but any other situation in which overseas policyholders may be given preference. We did not propose other changes to disclosure requirements, but noted we would consider future options for improving public and market-facing disclosure.

Submission feedback

There was widespread support for keeping the ratings and solvency disclosure requirements generally unchanged. However, there was some apprehension of broadening the overseas policyholder preference disclosure. A few respondents felt that overseas policyholder preference disclosure had little value due to limited consumer understanding and the unlikelihood of a situation arising where this would apply. Some respondents invited careful consideration of how this requirement is defined.

7.3 Data and disclosure standard

Proposal in consultation paper

We proposed empowering a data and disclosure standard to require insurers to provide information to the Reserve Bank or to the public, with no changes to the Reserve Bank's existing suite of information gathering powers. This standard would be used to set out our regular data gathering and disclosure requirements.

Submission feedback

Respondents were generally comfortable with this proposal. Respondents urged careful consideration of cost before imposing requirements on insurers, one submission suggesting that the required data should already exist and able to be supplied without undue expense. Several respondents wanted careful safeguards to ensure restraint in data requirements, with thoughtful consideration of the purpose behind requested data. One respondent wanted a large part of reporting requirements to be set out in statute, rather than reserved for a standard. Another respondent requested that branches following overseas data requirements should be allowed to provide data that complies with their overseas regulatory requirements. Some respondents requested further detail of this proposal and the opportunity to consult on an exposure draft.

8 Supervisory powers and approval processes

Refer to C3 and C4 for additional information on this chapter.

8.2 Supervisory powers

Proposal in consultation paper

We proposed a range of new supervisory powers, discussed in earlier consultations:

- extending investigation powers to cover entities that are not licensed insurers, but which might be failing to comply with a requirement to obtain a licence or falsely holding themselves out as licensed insurers;
- widening information gathering powers – the ability to require information from any person;
- an on-site inspection power;
- the ability to require an insurer's staff to answer questions 'on notice', during investigations;
- a breach reporting regime; and
- a power to direct insurers not to renew existing insurance contracts, in addition to the direction against writing of new business.

Submission feedback

Respondents were generally supportive of these proposals, but some concerns were raised around scope and safeguards.

Respondents supported extending the investigation powers to non-licensed insurers, noting that this will be beneficial for both competition and policyholder security.

Some respondents had concerns about a proposed power to obtain information from 'any person' in pursuit of the Reserve Bank's prudential purposes. One industry association was concerned that this ability might undermine its exchange of confidential information with the industry. Some respondents were concerned that the power was too wide and that a reasonable threshold needs to be established. They suggested these restraints on power should apply to the definition of 'any person' and the right of appropriate legal protection in the information gathering process.

Several respondents were concerned about a power to carry out on-site inspections without notice, arguing that this was unnecessary and could prove complex. Some noted the importance of safeguarding legal privilege and protections against self-incrimination. One argued that residential properties should be explicitly excluded from the on-site power.

Some respondents either felt that breach reporting was unnecessary or sought greater information on materiality and how it would work before legislation is enacted.

Some respondents were worried about a proposed power to direct insurers not to renew existing insurance contracts, in addition to the existing power to direct insurers not to write new business. Respondents recognised the argument for this power, however, were concerned about the consequences for policyholders, particularly within life and health insurance sectors. They

encouraged an explicit requirement for the Reserve Bank to consider the impact on policyholders if this proposal were to proceed and this power was exercised. One respondent expressed concern about the logistical application of this power when there is a legal right to renew an insurance policy.

Respondents requested further detail and the opportunity to consult on an exposure draft of these powers.

8.3 Supervisory approvals process

Proposal in consultation paper

We proposed leaving the current arrangements for Reserve Bank approval of the restructure of a statutory fund unchanged. We also proposed combining the statutory tests for other significant transactions (including obtaining significant influence,[10] change of corporate form,[11] transfers and amalgamations[12]) into a single approvals process.

Submission feedback

Respondents were supportive of consolidating the statutory tests into a single approvals process, though had some minor concerns about specific details.

Most respondents felt the indicative criteria for approvals were appropriate. However, others felt they were not sufficiently clear and were concerned about the ambiguity of including 'any other factors the Reserve Bank considers relevant'. Some respondents also suggested that the Reserve Bank should not be considering policyholder interests when approving transactions or felt that this wording was imprecise.

Most respondents were comfortable with the lower threshold for changes of control but several recommended considering a 'fast-track' or 'exemption' process for low-risk transactions.

Concerns remain about replacing the 20 working days timeframe with "reasonable time", some respondents suggested compromises to address this concern. One respondent suggested that if the currently imposed 20-day timeframe is exceeded, the Reserve Bank should provide a detailed update regarding the issues that are delaying approval. Another respondent suggested a provision along the lines of "as soon as is reasonably possible but, in any event, within X days". One respondent was concerned that since "necessary information" was not defined, the Reserve Bank could request an unreasonable amount of information which may lead to extended timelines. They suggest that should prior approval be required; a defined set of requirements needs to be communicated with a reasonable timeline attached.

Generally, respondents indicated that comprehensive guidance will be necessary for effective implementation of this new process.

[10] IPSA currently refers to a 'change of control' (section 26). As discussed in section 8.3 of the Omnibus Consultation, we proposed lowering the threshold for our approval of changing levels of control and, to reflect that, we propose describing this requirement in terms of 'obtaining significant influence', which echoes the wording in the DTA.
[11] Section 27 of IPSA.
[12] Section 44 of IPSA.

9 Enforcement and penalties

Refer to C3 for additional information on this chapter.

9.2 Enforcement tools

Proposal in consultation paper

The consultation proposed to introduce all the tools discussed in C3:

- An explicit power to require insurers to publish a written warning issued by the Reserve Bank.
- Remediation notices, which enable the Reserve Bank to specify actions an insurer must take to remedy breaches of regulatory requirements.
- Infringement notices that allow the Reserve Bank to impose modest fines for relatively minor or unambiguous breaches (primarily failure to provide required information).
- Enforceable undertakings, which involve a binding agreement to take remedial action and (unlike remediation notices) may include the payment of compensation.
- Civil pecuniary penalties, primarily for breaches of standards.

Submission feedback

Respondents were broadly supportive, but a few had concerns about the written warning and infringement notice tools. Generally, the feedback supported the proposed tools on the basis of proportionality, appropriate safeguards and procedures being in place.

Some respondents reiterated the seriousness of the requirement for an insurer to publish a written warning and the need for us to use this power sparingly. There was a strong preference for publication to take the form of posting on a website for the period of time in which it applies, rather than written notices to each individual policyholder which would be costly.

Some had concerns about infringement notices, and requested more information of specific procedures and safeguards that would be in position. For example, whether a warning would be issued after the first offence or a fine would be imposed immediately.

9.3 Penalty levels

Proposal in consultation paper

We proposed IPSA penalties should be set at levels that sit between those in the FMI Act and those in the DTA. The rationale for setting the penalty levels between these two regimes is based on the median difference of insurers' potential damage or financial impact, capital resources, potential to gain by offending, and potential gravity in terms of breach of trust.

Submission feedback

Most respondents were comfortable with the proposals, however some felt that the proposed increases were too high. One asked us to consider lower penalty limits for 'small insurers'. Some requested further detail about the criteria and threshold for penalties in an exposure draft.

10 Distress management

Refer to C3 for additional information on this topic.

10.2 Purpose statement for distress management

Proposal in consultation paper

We proposed introducing a purpose provision applicable to the distress management regime, along the following lines of:

1. To enable a licensed insurer in distress to be dealt with in an orderly manner.
2. To avoid significant damage to the financial system or the New Zealand economy.
3. To protect policyholder interests.
4. To protect the public interest.
5. Where not inconsistent with the other purposes, to minimise the costs of dealing with a licensed insurer in distress.

It was proposed that 'costs' in paragraph five should include:

i. preserving value in the insurer;
ii. preserving creditor interests; and
iii. limiting financial risk to the Crown.

Submission feedback

Most respondents were supportive of this proposal.

One respondent was concerned that the 'public interest' was not sufficiently well defined, and another noted that 'policyholder interests' might also be too ambiguous. One respondent observed that the provision was conceptually similar to that of the DTA, and wanted the Reserve Bank to acknowledge the different nature of the insurance and banking sectors when developing this proposal.

10.3 Statutory management

Proposal in consultation paper

We proposed that IPSA would contain two sets of provisions to supplement the moratorium that already comes into play in statutory management. These provisions would be:

1. an 'ipso facto' provision that provides that other contractual rights cannot be enforced against the entity in resolution solely because it has been placed into resolution/statutory management; and
2. a short term "stay" on the exercise of close out rights under derivatives contacts against the entity in resolution.

It was proposed that the trigger conditions for statutory management should be slightly modified as proposed in C3, to limit some circumstances in which statutory management is not available

unless the failure of an insurer would cause significant damage to the financial system or the economy of New Zealand.

Submission feedback

Most respondents were comfortable with the indicative proposals here. Some respondents raised questions about how *ipso facto* clauses might interact with reinsurance contracts and wanted to ensure that the provision would not deter reinsurers or be out of step with international norms.

One respondent suggested this should be part of the broader insolvency reform as opposed to IPSA, and another suggested thorough consultation with insolvency practitioners if this proposal was to proceed.

Most respondents were supportive of the proposed trigger for statutory management. One noted that it was important that resolution was available for 'niche' insurers in order to ensure cover was available, as well as regional insurers that might not meet the current 'financial system' threshold.

10.4 Resolution planning for insurers

Proposal in consultation paper

We proposed that IPSA should empower a standard to deal with resolution preparedness. However, it would not be expected that insurers are subject to resolution planning requirements in the short term.

Submission feedback

Respondents were broadly comfortable with the proposed approach but wanted to ensure that we carefully consider the cost benefit impact of any future implementation of resolution planning obligations. There was agreement that this should not be required in the short term.

11 Other issues

11.1 Smaller insurer exemptions

Proposal in consultation paper

The consultation proposed not to alter the existing exemptions for small insurers.

Submission feedback

Respondents agreed with maintaining the existing exemptions, however some respondents requested us to reconsider the threshold for qualifying as a 'small insurer', one submission noting this is particularly relevant with higher inflation rates.

11.2 Holding out and restricted words

Proposal in consultation paper

The scope of IPSA and restricted words provisions were introduced in C1, with stakeholders suggesting the Reserve Bank should consider the scope of these topics. The Omnibus Consultation

maintained that the Reserve Bank is unlikely to recommend changes for holding out and restricted words provisions.

Submission feedback

Several respondents wanted us to further consider broadening the restricted word requirements in IPSA. One submitter suggested that we require intermediaries to be clear with consumers that they were intermediaries, not insurers. Several submitters suggested that 'insurance' should be a restricted word in product descriptions if it is not being issued by a licensed insurer.

11.3 Coordination with other agencies

Proposal in consultation paper

In C4 we consulted on whether IPSA should include statutory provisions requiring the Reserve Bank to consult the FMA in two contexts. The Omnibus Consultation proposed that IPSA should include a statutory consultation requirement before issuing or revoking a licence, but not when making decisions under the proposed statutory approval process for significant transactions[13].

Submission feedback

All respondents were comfortable with this proposal. Some wanted to ensure that the Reserve Bank's views took precedence over those of the FMA and that guidance for coordination between the two entities is clearly set.

11.4 Other issues raised by stakeholders that were not in the consultation.

Several respondents invited us to consider whether the conditions for issuing directions in IPSA are sufficiently permissive given recent court decisions[14].

One respondent asked us to consider revision of the wording in IPSA section 53 to ensure that a transfer of policies by novation would not constitute an *event of default* in the case of some forms of credit insurance.

Another respondent asked for an amendment to section 81 of IPSA, to remove the requirement for generally accepted accounting practice (GAAP) accounts and be replaced by management accounts.

One respondent stated that the trigger for directions is too high, as "reasonable grounds to believe" indicates that the Reserve Bank would need to have completed an investigation before issuing a direction. They preferred that the trigger for direction be "reasonable grounds to suspect", as this would give the Reserve Bank more discretion in deciding when to intervene.

[13] Section 8.3 of Omnibus Consultation
[14] I.e. the judgement in *Crown v Harris and Mulholland* 2023 (CRI-2019-004-11829, NZHC 2634/5).

12 Next Steps

We intend this to be the final policy consultation. An exposure draft of an amendment Bill is planned for public release, likely in late 2025, should the Minister of Finance decide to take a set of proposals to Cabinet.