

Insurance (Prudential Supervision) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Insurance (Prudential Supervision) Act 2010 (the **Act**) received the Royal assent on 7 September 2010. It establishes a licensing and prudential supervision regime for insurers carrying on insurance business in New Zealand. There is a transitional period under the Act that runs through to 7 September 2013. Most insurers carrying on business during the provisional period are operating under a provisional licence whereby the full effect of the Act is delayed while insurers follow a path to full compliance. At the end of the transitional period, all provisional licences will have expired.

The Reserve Bank of New Zealand (the **Bank**) has reviewed the Act to ensure that, in light of experience, it is effective and that there will be a smooth transition to full licensing without the imposition of unnecessary compliance costs on the insurers. A number of technical issues have been identified as appropriate for reform. This Bill contains amendments relating to those technical issues.

The amendments that would ideally come into force before 7 September 2013 include amendments relating to interim financial reporting. The existing requirement (in section 81 of the Act) for this to be on the basis of New Zealand generally accepted accounting practice may be unduly onerous for overseas insurers.

The Bill also contains amendments that extend the term of provisional licences of insurers that enter into an insolvency procedure before 7 September 2013. Extending the term of the provisional licences of these insurers ensures that the distress management tools made available under Part 4 of the Act remain available to the Bank and liquidators.

Other amendments will reduce unnecessary costs and improve administrative efficiency (for example, a formalised register administered by the Bank and an ability to exempt insurers in run-off from the requirement to maintain a current financial strength rating).

The Bill also amends section 69 of the Reserve Bank of New Zealand Act 1989. Section 69 requires the Bank to keep a register of registered banks and the amendment provides for a common standard across that Act and the Insurance (Prudential Supervision) Act 2010.

It is intended that the Bill will be divided at the committee of the whole House stage into separate Bills as follows:

- *Part 1* will become the Insurance (Prudential Supervision) Amendment Bill:
- *Part 2* will become the Reserve Bank of New Zealand Amendment Bill.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. This Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that this Bill amends the Insurance (Prudential Supervision) Act 2010 (the **principal Act**).

Part 1

Amendments to principal Act

Clause 4 amends section 21. This section currently allows a condition to be imposed on a licence that requires an insurer or its directors to certify that other conditions of the licence have been complied with. This has been extended to require certification in relation to compliance with the principal Act and the regulations and other requirements imposed on licensed insurers under other enactments.

Clause 5 amends section 25 to require the Reserve Bank of New Zealand (the **Bank**) to give notice of the issue of a licence on the register kept under *new section 54A* (see *clause 7*) rather than on the Bank's Internet site.

Clause 6 amends section 30 (which relates to the cancellation of a licence) so that the Bank is no longer required to give notice of its intention to cancel a licence where the insurer has asked the Bank to cancel the licence.

Clause 7 inserts *new section 54A*. *New section 54A* requires the Bank to keep a public register of licensed insurers.

Clause 8 repeals section 58 (which relates to the incorporation of material by reference in solvency standards). This has been replaced by *new section 238A* (inserted by *clause 15*). *New section 238A* provides for material to be incorporated by reference in regulations and other instruments made under the principal Act (in addition to solvency standards). *Clause 17* makes consequential amendments to Schedule 1.

Clause 9 amends section 60 (which requires licensed insurers to have a current financial strength rating). The amendment provides that the Bank may exempt a licensed insurer from the requirement to have a current financial strength rating if the insurer is in run-off (that is, it has ceased to enter into new contracts of insurance). *Clause 13*

consequentially amends section 232 (which contains general provisions about exemptions).

Clause 10 amends section 64 (which relates to the disclosure of the current financial strength rating of a licensed insurer to its policyholders). The amendment provides that disclosure is not required if a contract of insurance is renewed more frequently than annually and the current financial strength rating was disclosed less than 12 months before the date of the renewal.

Clause 11 amends section 81 in relation to requirements to supply interim financial statements to the Bank. Currently, that section requires interim financial statements to be prepared in accordance with generally accepted accounting practice (NZ GAAP) within 5 months of the end of the first half of each accounting period. The amendments include—

- empowering the Bank to give a notice to an insurer that allows the insurer to prepare interim financial information in accordance with requirements other than NZ GAAP. This may, for example, be requirements that apply in the insurer's home jurisdiction; and
- changes to align the provision with the Financial Reporting Bill (for example, by reducing the preparation period to 3 months and removing the requirement to prepare interim financial statements for both a group and the parent (instead, an insurer that is part of a group will prepare interim financial statements for the group)).

Clause 12 inserts *new section 217A*. *New section 217A* extends the limitation period in respect of an offence under the principal Act so that it ends on the date that is 5 years after the date on which the offence was committed.

Clause 14 makes a consequential change to the regulation-making powers in section 237.

Clause 15 inserts *new section 238A*, which relates to incorporation of material by reference (*see clause 8*).

Clause 16 amends section 246 (which relates to the duration of provisional licences). Currently, the provisional licences will cease to be in force on the date that is 3 years after the date on which the principal Act received the Royal assent (8 September 2013). Section 246 is amended to continue a provisional licence in force if the holder is subject to an insolvency proceeding or process. This means, for example, that the entity concerned continues to be subject to the distress management provisions in Part 4 of the principal Act as a licensed insurer.

Part 2

Amendments to Reserve Bank of New Zealand Act 1989

This Part amends the Reserve Bank of New Zealand Act 1989 to align section 69 (which relates to the register of registered banks) with *new section 54A* of the Insurance (Prudential Supervision) Act 2010 (as inserted by *clause 7*). The amendment

provides for the register to contain the name and current credit rating of each registered bank and other information that may be prescribed by regulations.

Hon Bill English

Insurance (Prudential Supervision) Amendment Bill

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Part 2

Amendments to Reserve Bank of New Zealand Act 1989

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Insurance (Prudential Supervision) Amendment Act **2012**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Insurance (Prudential Supervision) Act 2010 (the **principal Act**).

Part 1

Amendments to principal Act

4 Section 21 amended (Conditions of licence)

Replace section 21(2)(f) with:

- (f) a condition that requires the licensed insurer or the directors of the insurer (or both) to certify that 1 or more of the following have been complied with (being certification that is given at the time or times and in the manner specified in the condition):
- (i) any conditions of the licence:
 - (ii) any requirements of this Act or the regulations:
 - (iii) any requirements of any other enactment imposed on the insurer as a licensed insurer (for example, financial reporting obligations):

5 Section 25 amended (Bank must notify applicant of decision and give notice on its Internet site)

- (1) In the heading to section 25, replace “its Internet site” with “register”.
- (2) Replace section 25(3) with:

- (3) The Bank must give notice of the issue of a licence on the register kept under **section 54A**.

6 Section 30 amended (Cancellation of licence)

In section 30(2), replace “subsection (1)(a)(i) to (vi)” with “subsection (1)(a)(ii) to (vi)”.

7 New section 54A and cross-heading inserted

After section 54, insert:

Register

54A Register

- (1) The Bank must keep a public register of licensed insurers.
- (2) The Bank must determine the form of the register and may amend the form as it considers necessary.
- (3) The register may include—
 - (a) the name of each licensed insurer; and
 - (b) the current financial strength rating of each licensed insurer (unless the insurer is not required to have such a rating); and
 - (c) any other prescribed information.
- (4) The Bank must take all reasonable steps to ensure that the information contained in the public register is available to members of the public at all reasonable times.

Compare: 1989 No 157 s 69

8 Section 58 repealed (Incorporation by reference)

Repeal section 58.

9 Section 60 amended (Licensed insurer must have current financial strength rating)

- (1) Replace section 60(2)(c) with:
 - (c) a captive insurer; or
 - (d) an insurer that is exempted under **subsection (2A)**.
- (2) After section 60(2), insert:
 - (2A) The Bank may, by notice to a licensed insurer, exempt the insurer from compliance with subsection (1) if the Bank is satisfied that the insurer has ceased to enter into new contracts of insurance as an insurer.
 - (2B) **Subsection (2A)** is subject to section 232 (which provides for general provisions relating to exemptions).

10 Section 64 amended (Disclosure of current rating to policyholder)

After section 64(4), insert:

- (4A) If a contract of insurance is renewed, the licensed insurer is not required to comply with subsection (1) if—
- (a) the contract is of a kind that is renewable more frequently than annually; and
 - (b) the information referred to in that subsection was disclosed in writing to the policyholder less than 12 months before the date of the renewal; and
 - (c) that information has not changed since the last disclosure was made to the policyholder under this section.

11 Section 81 amended (Financial statements must be given to Bank)

- (1) In the heading to section 81, after “**statements**”, insert “**and interim financial information**”.
- (2) Replace section 81(2) to (4) with:
- (2) A licensed insurer must, within 3 months after the end of the first half of each accounting period of the insurer,—
- (a) prepare interim financial information for that half-period that complies with **subsection (3)**; and
 - (b) ensure that copies of that information together with a copy of the auditor’s report on the information (if any) are given—
 - (i) to the Bank; and
 - (ii) for registration to the Registrar if this is required by the regulations.
- (3) The interim financial information must—
- (a) comply with—
 - (i) generally accepted accounting practice; or
 - (ii) requirements specified by the Bank in a written notice given to the insurer (for example, regulatory requirements that apply in the insurer’s home jurisdiction); and
 - (b) be audited if required by the regulations.
- (4) If **subsection (3)(a)(i)** applies, the interim financial information must be interim financial statements prepared in respect of—
- (a) the insurer if the insurer, at the end of the half-period, has no subsidiaries; or
 - (b) a group comprising the insurer and its subsidiaries in any other case.
- (4A) In this section, **generally accepted accounting practice**, **Registrar**, and **subsidiaries** have the same meanings as in the Financial Reporting Act 1993.

12 New section 217A inserted (Time for filing charging document)

After section 217, insert:

217A Time for filing charging document

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence under this Act ends on the date that is 5 years after the date on which the offence was committed.

13 Section 232 amended (General provisions relating to declarations and exemptions)

After section 232(2)(b), insert:

(ba) **section 60(2A)** (which relates to exemptions for insurers in run-off from the requirement to have a current financial strength rating):

14 Section 237 amended (Regulations)

- (1) In section 237(1)(j), replace “statements” with “information”.
- (2) In section 237(1)(v), replace “section 226” with “**section 54A** or 226”.

15 New section 238A and cross-heading inserted

After section 238, insert:

Incorporation by reference

238A Incorporation by reference

- (1) This section applies to the following instruments:
 - (a) a declaration under section 9:
 - (b) a fit and proper standard:
 - (c) a solvency standard:
 - (d) regulations.
- (2) The following written material may be incorporated by reference in an instrument referred to in **subsection (1)**:
 - (a) standards, requirements, or recommended practices of international or national organisations:
 - (b) standards, requirements, or recommended practices prescribed in any country or jurisdiction:
 - (c) any other written material that deals with technical matters and is too large or impractical to include in, or print as part of, the instrument.
- (3) Schedule 1 applies to any material incorporated by reference in an instrument referred to in **subsection (1)**.

16 Section 246 amended (Duration of provisional licence)

- (1) After section 246(1), insert:
- (1A) Despite subsection (1), if, immediately before the date that is 3 years after the date on which this Act receives the Royal assent, an entity that still holds a provisional licence is subject to an insolvency proceeding or process, the provisional licence remains in force until it is cancelled under subsection (2).
- (2) Replace section 246(2)(b) with:
- (b) the Bank is satisfied that the holder has ceased to carry on insurance business in New Zealand; or
 - (c) in the case of **subsection (1A)**, the Bank is satisfied that—
 - (i) the holder is no longer subject to an insolvency proceeding or process; or
 - (ii) the holder is a company that has been removed from the New Zealand register (within the meaning of the Companies Act 1993); or
 - (iii) the holder is an overseas company that has been removed from the overseas register (within the meaning of the Companies Act 1993); or
 - (iv) the holder has been liquidated, wound up, or dissolved or has otherwise ceased to exist.
- (3) After section 246(2), insert:
- (3) **Subsection (2)(c)** does not limit subsection (2)(a) or **(b)**.
- (4) In this section, an entity is subject to an **insolvency proceeding or process** if any of the following apply:
- (a) the entity is in liquidation under the Companies Act 1993 or under any other Act:
 - (b) the entity is in voluntary administration or subject to a deed of company arrangement:
 - (c) a receiver has been appointed and is acting in relation to the whole, or substantially the whole, of the assets and the undertaking of the entity:
 - (d) the entity is subject to a compromise with its creditors that has been approved under Part 14 of the Companies Act 1993:
 - (e) an order that an arrangement or a compromise is binding on the entity has been made under Part 15 of the Companies Act 1993:
 - (f) the entity is in statutory management under this Act, the Corporations (Investigation and Management) Act 1989, or any other enactment:
 - (g) in the case of an overseas person, the overseas person is subject to a proceeding or process in its home jurisdiction that is similar to any of those set out in **paragraphs (a) to (f)**.

17 Schedule 1 amended

- (1) In the Schedule 1 heading, replace “s 58” with “**s 238A**”.
- (2) In Schedule 1, heading to clause 1, delete “**into solvency standards**”.
- (3) In Schedule 1, clauses 1(1) and (2)(b), 2(1) and (2), 3(1)(a), (2), and (3), 4, 5, 6(1) and (3), 7, and 8(1) and (2), replace “solvency standard” with “specified instrument” in each place.
- (4) In Schedule 1, clause 1(2)(a), replace “solvency standard is issued” with “specified instrument is issued or made”.
- (5) In Schedule 1, after clause 1(2), insert:
 - (3) In this schedule, **specified instrument** means an instrument to which **section 238A** applies.
- (6) In Schedule 1, clauses 3(2), 4, and 5, replace “the standard” with “the instrument” in each place.

Part 2**Amendments to Reserve Bank of New Zealand Act 1989****18 Principal Act**

Sections 19 and 20 amend the Reserve Bank of New Zealand Act 1989 (the **principal Act**).

19 Section 69 amended (Register)

After section 69(2), insert:

- (2A) The register may include—
 - (a) the name of each registered bank; and
 - (b) the current rating of each registered bank under section 80 (if any); and
 - (c) any other prescribed information.

20 Section 173 amended (Regulations)

After section 173(f), insert:

- (fa) prescribing information for the purposes of **section 69(2A)(c)**: