

4 May 2012

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Dear Alice

## **SUBMISSION ON DRAFT FINANCIAL MARKETS AUTHORITY (LEVIES) REGULATIONS 2012**

The Insurance Council of New Zealand ("the Insurance Council") appreciates the opportunity to comment on the MED's draft Financial Markets Authority (Levies) Regulations 2012.

### **1. Previous submission**

We made a submission to MED on 16 December 2011, suggesting that:

- FMA funding should come from general taxation, rather than the proposed levies on Financial Service Providers ("FSP") and companies;
- The insurance and banking sectors would pay almost 25% of the proposed levy, and on this basis appear to be making a disproportionate contribution to the total costs in relation to the amount of FMA intervention likely in these sectors, and
- If the proposed levy structure is to be maintained, we recommend a number of changes in the interests of equity and efficiency and would appreciate an opportunity to discuss appropriate levy levels.

Our primary concern is that these recommendations have not been addressed in the draft Financial Markets Authority (Levies) Regulations 2012 and that, accordingly, insurers may be required to contribute disproportionate amounts to the funding of the FMA, despite having little ongoing interaction with the organisation. With the lack of feedback, we have to assume our arguments have either been ignored or misunderstood. It is imperative to insurers that the following considerations be understood and addressed.

### **2. Concerns with proposed Financial Markets Authority (Levies) Regulations 2012**

The proposal around the timing and method of collection for levies seems to be appropriate in most circumstances. However, there are significant concerns around the underlying disproportionate and inequitable contribution required by different insurers as a result of the proposed wording in the regulations.

#### **2.1. Flawed thinking around class 3 categorisation of Insurers**

The basis of the levy proposal with respect to insurers is flawed, particularly regarding the way insurers' contributions are arbitrarily calculated (with no relationship to actual FMA interaction). The regulations wrongly assume that:

- Insurers all have the same FMA interests as each other (they don't - some insurers don't give financial advice and others actively do);
- The level of FMA related activity increases due to the size of an insurers overall book (it doesn't - the consumer-related aspect of an insurers book, with more transactions, would presumably give rise to more market conduct issues as opposed to the commercial-related aspects and, yet, the value of one commercial transaction will often outweigh a great number of consumer ones);
- A book of general insurance policies has the same characteristics as a managed book of 3rd party assets or schemes (it doesn't - the former category isn't speculative, but rather reflects a contractual promise to pay for losses in certain circumstances and is backed up by Reserve Bank prudential regulation. The latter category however is speculative in nature and has the intent of trying to secure a return to the customer); and
- Insurers all require the FMA's brand of supervision (they don't - The key interaction between general insurers and the FMA should only be in relation to the existence and regulation of QFEs. Any contribution to FMA services should theoretically be channeled in the monitoring of those entities. Conversely, Insurers are all subject to fair trading complaints but the Commerce Commission doesn't charge Insurers for investigating any complaints into insurance operations.)

Accordingly the Ministry of Economic Development needs to seriously consider:

- the rationale for insurers even being included in these Regulations;
- if for some reason MED does not appreciate this rationale, there needs to be a much more flexible basis for charging the fees which should be based primarily on QFE status rather than purely on gross written premium; and
- there needs to be a more equitable distribution between insurers and other financial service providers, as insurers will likely require nominal FMA supervision.

## **2.2. Clarification around how levy would operate for branches**

There is also concern around the implications of linking levy amounts to gross written premium ("GWP"), particularly for insurers operating as branches in New Zealand. The draft regulations are unclear around how the levy will apply to such branches.

The Schedule on page 9 of the draft regulations and the relevant definition on page 2 indicate that an insurer's levy contribution will depend on the 'person's' GWP. The term 'person' generally relates to the legal entity as a whole, rather than the branch, meaning the levy may need to be calculated in relation to the legal entities GWP generated outside the New Zealand branch. However, the FMA will obviously have no contact with the wider company. The premium should only reflect the size and scale of the New Zealand branch.

We would like clarification that the calculation of annual gross premium income should only relate to the activities of the local branch.

## **2.3. Issue for reinsurers**

Another significant issue with the current categorisation of insurers is its implication for reinsurers. The term 'licensed insurer' effectively captures reinsurers as well as insurers because reinsurers are required to also hold a licence. This indicates that reinsurers could be required to

make levy contributions to the FMA. This seems entirely inappropriate as reinsurers give no 'financial advice' to retail clients, are not required to form a QFE and, accordingly, have no interaction with the FMA.

Furthermore, the draft regulations make clear that the insurers FMA levy is to be calculated without deduction of any reinsurance premium (relevant definition on page 2). Effectively, MED is asking insurers and reinsurers to contribute funding towards the FMA in relation to the same premium. This appears to be unnecessary and unjustifiable double counting.

#### **2.4. Disproportionate contribution**

Despite not knowing the final figures which will be attributed to each class of Financial Service Provider, it seems pertinent to reiterate the point that insurers are being asked to make a disproportionate contribution to the funding of the FMA.

The Insurance industry is already being heavily regulated by the Reserve Bank and it seems difficult to envisage when the FMA would be required to undertake regulatory supervision above the Reserve Bank. Nevertheless, insurers are still being asked to contribute a significant proportion of FMA funding. Despite reiterating this point to MED, the Insurance Council has not received any feedback that these concerns have been taken into consideration and/or otherwise.

### **3. Conclusion**

Thank you again for the opportunity to provide input on this discussion paper. As noted above, the Insurance Council is very concerned around MEDs proposal. There are certain areas in the Regulations that cause even further concern. We would very much appreciate the opportunity to meet with MED to discuss the matter. Please contact Terry Jordan on (04) 495 8002 or at [terry@icnz.org.nz](mailto:terry@icnz.org.nz).

Yours sincerely



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