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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:

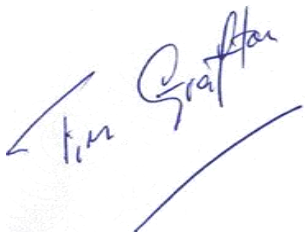
- What information can be requested;
- The purpose for which the information is being requested;
- What information can be shared and with whom, eg, which other regulators/entities (including NZ and overseas regulators);
- Under what circumstances information can be shared;
- To what standard RBNZ will 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 Regulatory Affairs Manager by emailing greig@icnz.org.nz.

Yours sincerely,



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