Insurance Council of New Zealand
Te Kāhui Inihua o Aotearoa

Level 2 Asteron House
139 The Terrace
Wellington 6011

(04) 472 5230
icnz@icnz.org.nz
www.icnz.org.nz

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Reserve Bank of New Zealand
Prudential Policy – Financial Policy
PO Box 2498
Wellington

Emailed to: ipsareview@rbnz.govt.nz

ICNZ SUBMISSION ON THE REVIEW OF THE INSURANCE (PRUDENTIAL SUPERVISION) ACT 2010: OMNIBUS CONSULTATION

Thank you for the opportunity to submit on the Reserve Bank's Review of the Insurance (Prudential Supervision) Act 2010: Omnibus Consultation (**consultation paper**).

The Insurance Council of New Zealand Te Kāhui Inihua o Aotearoa (**ICNZ**) represents general insurers that insure about 95 percent of the Aotearoa New Zealand general insurance market, including well over a trillion dollars' worth of property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, cyber insurance, commercial property, and directors and officers insurance).

This submission has two parts:

- Our overarching comments set out below, and
- Our responses to the proposals set out in the consultation paper set out in the Appendix.

Overarching comments

Insurance regulation should reflect the insurance sector's risk profile

Insurers have very different business models and risk profiles to banks and deposit takers. The appropriate regulation of insurers needs to reflect the insurance sector's unique attributes. These include: the pooling and diversification of risks; the fact that policyholders pay for protection *ex-ante*; the highly integrated approach to risk management; and the long-term investment horizon driven by strong and stable balance sheets.

The traditional intermediation function of banks is maturity transformation – aggregating highly liquid deposit liabilities and using them to provide longer term assets (loans), creating an inherent mismatch. Whereas insurance companies collect premiums for future liabilities which are generally illiquid and, through aggregation and diversification, are also generally predictable. This creates an inherently stable balance sheet.

The key differences between banks and insurers mean that two very important risks for banks – liquidity risk and systemic risk – are generally not significant risks for insurers.

In the vast majority of cases, deposits have much shorter maturities than loans, so banks need to engage in “maturity transformation” to meet the mismatching needs of lenders and borrowers. The key assumption on which maturity transformation relies is that not all depositors will ask for their money back at the same time, since depositors’ needs for cash are unlikely to occur at the same time.

Confidence in individual banks and the wider financial system is therefore essential, since if that confidence is lost and, as a result, all depositors attempt to withdraw their money at once, this can lead to a “bank run”. Liquidity problems can become solvency problems, with banks, potentially in large numbers, failing as a result. Liquidity risk is therefore a significant concern for banks and their regulators.

Liquidity risk is rarely problematic in insurance, because of the following key factors:

- Insurance liabilities are generally illiquid.
- Insurers generally match the duration and liquidity of their assets with that of their liabilities.
- Insurers are generally diversified companies and benefit considerably from risk diversification across product lines and time.
- Insurers maintain reserves covered with tangible assets, for every policy or certificate issued, whereas banks are not required to hold reserves covering all their on-demand accounts.
- Contagion risk is far lower because insurers are far less interconnected.
- Insurers are not at risk of failing overnight.
- Insurers retain almost all of the risk they underwrite on their own balance sheet.
- Insurers do not play the same core role as banks in the payments system.
- An insurer’s activities are substitutable.

Consequently, care needs to be taken when considering aligning the approach taken to the regulation of insurers to that for banks. Consistency should not be pursued as an end in itself. An example of where this concern arises is in relation to the proposals for the Insurance (Prudential Supervision) Act (**IPSA**) to reference the Reserve Banks’ broader purpose and financial stability objective under the Reserve Bank of New Zealand Act 2021. The fundamentally different risk profile of the insurance industry needs to be reflected throughout the IPSA review.

It is important that New Zealanders remain well-insured

New Zealand is highly vulnerable to natural disasters. It was ranked as the second riskiest country in the world, primarily due to seismic risks, in a major international study released by Lloyd’s of London in 2018[1]. As a risky country, it is important that New Zealanders remain well-insured and that New Zealand continues to be able to attract insurance capital to do that job. While recognising the Reserve Bank’s intention to ensure that IPSA can support a more proactive and intensive approach to insurance supervision, we would emphasise the need not to impose unnecessary compliance

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[1] *A world at risk: Closing the insurance gap*, Lloyd’s, October 2018.

costs, the need not to impose undue barriers to entry and the desirability of encouraging overseas insurers and reinsurers to participate in the New Zealand insurance market.

We look forward to engaging with you further as the detail of the IPSA regime is developed

The consultation paper indicates that the detail of certain proposals will be further developed. Our comments on those proposals have therefore been relatively high-level. We would welcome the opportunity to continue to engage with you on the design of the IPSA regime as the detail of the proposals is developed.

The Reserve Bank has indicated that it will be publishing an exposure draft in 2025. We look forward to reviewing and commenting on the draft bill.

Full responses to the proposals in the consultation paper are set out in the Appendix.

Conclusion

Thank you again for the opportunity to submit on this matter. Please contact Susan Ivory (susan@icnz.org.nz) if you have any questions on our submission or require further information.

Yours sincerely

Tim Grafton
Chief Executive

Susan Ivory
Regulatory Affairs Manager

Appendix: Review of the Insurance (Prudential Supervision) Act 2010 – Omnibus Consultation

Responses to proposals in the consultation paper

Statutory purposes and principles	
2.2.9	*We are interested in stakeholder views on:* - *whether IPSA's purposes should explicitly reference the Reserve Bank's broader purpose and financial stability objective under the RBNZ Act?* The Reserve Bank has not previously consulted on changes to IPSA's statutory purpose and principles. This proposal arises from purposes in the new Reserve Bank of New Zealand Act 2021 (**RBNZ Act**) and Deposit Takers Act 2023 (**DTA**). It is important to stress an obvious point that insurers are not banks nor deposit takers. Indeed, they are very different to them and present a totally different risk profile from a supervisory perspective. The fact that the RBNZ Act and the DTA have been passed with specific purposes and principles does not logically imply that those changes ought to apply to insurance. If prudential supervision of insurers was the responsibility of another regulatory entity, there would likely be less reason to mount a case for reference to the Reserve Bank's broader purpose. The broader purposes of the RBNZ Act are to: - provide for the continuation of the Reserve Bank of New Zealand; and - promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy. The second purpose above is also included in the DTA. Insurance does support prosperity and the well-being of New Zealanders by restoring loss from sudden and unforeseen events, but its purpose is not to promote prosperity and well-being. Similarly, insurance may contribute to individual and business sustainability by restoring loss, but its role is not to promote productivity. Banks on the other hand provide loans and accept investments and that dynamic is essential to prosperity, well-being and productivity. The way in which insurance operates to restore loss without betterment is fundamentally different. As the purpose and principles of an Act can be used to communicate the broad purpose of a regulatory regime, signal overall policy direction, set a basis for making and monitoring decisions involving discretion, and guide interpretation of the legislation, it is a concern that alignment would result in the Reserve Bank regarding insurance regulation as similar to the regulation of banks and deposit takers. And with respect to the latter, insurers are highly regulated, have high levels of liquidity and significant flexibility in managing a response to stress. These characteristics do not apply to non-bank deposit takers. Indeed, even with respect to banks, which have seen significant runs on funds (Silicon Valley Banks, Credit Suisse) in 2023, insurers do not face the same type of risk. The Reserve Bank has a financial stability objective too under the RBNZ Act. This objective is to protect and promote the stability of New Zealand's financial system. In our view, banks present a systemic risk to the New Zealand financial system, but insurers do not. Our risks are relatively short-term and often no longer than 12 months. Insurers have shown their ability to meet

through catastrophic events their commitments to policyholders. While we acknowledge the Reserve Bank's concerns that climate change may lead to lower levels of insurance cover which may have consequential impacts on banks and their loans, it would be of concern if the Reserve Bank were to find its supervision of insurers conflicted between ensuring insurance remain in place regardless of the risk in order to support the banking system. The Reserve Bank's focus should remain on appropriately regulating banks and enabling insurers to carry out their fundamental role to price risk and provide these signals to the financial system and New Zealanders more broadly.

In summary, aligning IPSA to the RBNZ Act and DTA risks creating ambiguity and confusion about the Reserve Bank's role when supervising insurers.

- *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?*

We support and assume the Reserve Bank supports promoting the soundness of the insurance sector. On efficiency, it is important to distinguish between the efficiency of individual insurers, which ought not to be a concern of the Reserve Bank, and the efficiency of the sector. The efficiency of the sector as a whole depends on several factors. These include access to reinsurance capital, open access to entry into the New Zealand market, and a level-playing field with regards to adopting and applying technological changes to improve efficiency. In our view, it is important that the Reserve Bank retains its ability to support such measures. Market efficiency may also be a product of the degree of competition and while we believe the New Zealand market is competitive, we would be concerned if changes to IPSA meant fewer insurers participate in the New Zealand market or if unfair practices diminished competitiveness. Although that would be a primary responsibility of the Commerce Commission, we envisage activities by unlicensed, offshore insurers could create an issue the Reserve Bank should be concerned to address. We therefore support retaining the "efficiency" purpose.

- *whether a reference to access to insurance is needed?*

We do not support including a reference to access to insurance. It would be difficult to define what "access to insurance" means in principle, for example, should everyone be offered insurance no matter the costs, or are there expectations that insurance would be reasonable in cost? Insurance transfers risk from the insured's balance sheet to that of the insurer at a price commensurate to risk. Insurers manage their risk exposure prudently and within the boundaries prescribed by the prudential regulator. It is critical that individual insurers are able to determine their own appetite for risk and to price that risk accordingly and reflecting other costs beyond their control such as reinsurance.

We do not see it as the Reserve Bank's role to enforce access to insurance and remove a competitive market's ability to carry out its fundamental role. To do so, could lead to insurance being provided in an unsustainable and imprudent manner. Intervention into the insurance market to address access to insurance in other jurisdictions is often addressed by schemes that are independent of the prudential regulator. Any such scheme should integrate the need to reduce physical risks with policy to support access to insurance. Such schemes are well beyond the role of the Reserve Bank.

- *whether the purposes of IPSA should refer to promoting the soundness of the* ***insurance sector*** *or the soundness* ***of each insurer****?*

	The purposes of IPSA should refer to promoting the soundness of the sector not each insurer. The soundness of each insurer is addressed in the proposed changes to the Act by widening the range of tools available to the Reserve Bank to ensure solvency levels are maintained and there is a proposed ladder of intervention and supervisory responses available for that purpose. The Reserve Bank risks being perceived as biased against/for some market players vis-à-vis others if it gets into the business of promoting individual insurers. Taking on such a purpose would require judgements and assessments of soundness that should be transparent and contestable, but it is hard to understand how that could be achieved without revealing commercially sensitive information. The outcome of such an approach would likely undermine confidence in the Reserve Bank. - *what role policyholder interests should play in IPSA's purposes and principles?* The principle of adequately protecting the interests of policyholders and the public interest when an insurer is in distress or other difficulties is referenced in the current IPSA. We see no reason to expand on this in the purposes and principles and agree with the comment in paragraph 2.2.35 of the consultation paper that concern for policyholders can be read-off from the existing principles and purposes (which we do not consider is negated by principles that explicitly note consumers' responsibility for their own decisions and that IPSA is intended to be a non-zero failure regime). As noted in the consultation paper, the Financial Markets Authority (**FMA**) exercises authority with respect to protecting policyholders through the Conduct of Financial Institutions (**CoFI**) legislation and the requirements of fair conduct programmes. It is noteworthy that the FMA is particularly interested in access to insurance for people experiencing vulnerability in its many forms. There is a risk that broadening the Reserve Bank's ambit in this area may cause overlap and confusion for regulated entities. While the consultation paper references the IMF and Scholten reviews, it should be noted that these reviews occurred at a time when no CoFI legislation existed. Although not referenced in the consultation paper, we note the principle of taking a proportionate approach to regulation and supervision and consistency of treatment of institutions are included in the DTA. We see no reason why these principles should not apply to IPSA as they reflect best supervisory practice.
Definition of contract of insurance	
2.3.5	*We propose that the current definition of contract of insurance should not be changed significantly.* Although we welcome the proposal to introduce a declaration power, we would reiterate our comments in our submission on the Reserve Bank's previous consultation 'Review of the Insurance (Prudential Supervision) Act 2010 (Scope and Overseas Insurers)' that the definition of "contracts of insurance" under section 7(1) and (2) of IPSA should be amended to be clearer. Please refer to pages 5 to 6 of our previous submission[2].
2.3.6	*We propose introducing a 'declaration power' that would allow us to declare that certain kinds of contract are contracts of insurance (as currently defined). Note that IPSA already provides*

[2] ICNZ submission on Review of the Insurance (Prudential Supervision) Act 2010 (Scope and Overseas Insurers), dated 19 March 2021

	that that certain types of contracts may be declared not to be insurance contracts through regulation. We support the introduction of a deeming power to declare that certain kinds of contracts are insurance contracts. This will accommodate the evolution of new products to the market, support innovation within the sector and enable the inclusion of boundary products. Reference in the consultation to parametric products is a case in mind and these are currently available in the New Zealand market. There should be consultations for declarations where it is appropriate for industry to provide feedback, for example, new types of products or where the product boundaries are uncertain.
Definition of 'carrying on insurance business in New Zealand'	
2.4.8	*We propose modifying the 'carrying on insurance business in New Zealand' definition in section 8 of IPSA, to remove the requirement that a person must be liable under a contract of insurance to a New Zealand policyholder. This means that all New Zealand-incorporated insurers will need to be licensed, whether or not they issue contracts to New Zealand policyholders.* We support the change to the definition of "carrying on insurance business in New Zealand" as outlined. This change is important to mitigate the reputational risk to New Zealand posed by the potential for entities incorporated in New Zealand to write cover offshore and not face any regulatory control.
2.4.9	*We propose explicitly excluding overseas-incorporated captive insurers and overseas companies that only act as reinsurers in New Zealand from the definition.* We support this. The argument to exclude captives is straightforward and reliance on regulation in their own jurisdiction is a prudent approach to take. It is consistent with the approach taken above where offshore jurisdictions can rely on the Reserve Bank to regulate those who are incorporated here and write cover offshore. We agree with the exclusion of overseas reinsurers and the focus on primary insurers and the reinsurance they purchase. To venture into regulating reinsurers will only lead to undesirable complexities.
Group supervision – licensing non-operating holding companies	
2.5.9	*We propose amending IPSA so that we will have the ability to require licensing for a non-operating holding company, for corporate insurance groups headquartered in New Zealand (whether operating only domestically or across borders). Broadly speaking, the licensing regime is proposed to operate as follows:* - *A separate licensing regime for NOHCs, similar to as the existing licensing regime for insurers but omitting those obligations which are not relevant to NOHCs. We will set out the details if and when we publish an exposure draft.* - *Particular provisions for groups within standards for risk management and corporate governance. The standards would include requirements for the head of group to provide appropriate group-wide governance and risk management.* - *Standards to impose requirements for the management of outsourcing and of related-party exposures (section 6.2 below) would also promote the management of intra-group risk.* We see no reason to oppose this extension to non-operating holding companies headquartered in New Zealand noting the risks and challenges supervisors face. This move seems consistent

	and reciprocal with respect to international convention of relying on home country supervision to ensure that group-level risks have been considered.
2.5.10	*We will continue to follow the international convention of relying on overseas regulators for group supervision of corporate groups headquartered overseas. For example, we rely on the Australian Prudential Regulation Authority (APRA) to supervise Australian-based insurance groups that have subsidiaries in New Zealand).* We agree with this proposal.
'Overseas' insurers – subsidiaries	
3.2.4	*We propose introducing an outsourcing standard to ensure that insurers have identified and considered the prudential and business continuity risks presented by outsourcing arrangements.* We do not consider there is a need for an outsourcing standard and particularly not one for within an insurance group. While outsourcing arrangements support efficient and effective ways of conducting business, we acknowledge risks exist when outsourcing to third parties critical aspects of insurance. We believe licensed insurers already have sufficient regard to their outsource risk as part of their wider risk management and imposing additional requirements may add unnecessary regulatory burden. Further, we are not aware of any problems arising from the current regime. As the intended scope of the standard has not been explained, it is difficult to provide a response to what is proposed. If an outsourcing standard is to be introduced, the focus should only be on material outsourcing outside an insurance group which would materially impact the operations of the insurer. Lessons need to be taken from banks and the BS11 Outsourcing Policy so that the standard does not become just a compliance exercise with significant cost. Care should be taken to ensure alignment with relevant outsourcing requirements abroad where an overseas insurer is involved (e.g. Australia, United Kingdom, United States of America). It should be considered sufficient for a member of an Australian group to rely upon any equivalent APRA outsourcing requirements. Consideration needs to be given to how this would work with the new APRA Prudential Standard CPS 230 Operational Risk Management which sets out the requirements for the management of service provider arrangements. The Reserve Bank should apply a principles-based and risk-based approach to supervising any standard reflecting which insurers it focuses on.
3.2.5	*We propose introducing a standard to regulate connected exposures and concentrated exposures.* It is difficult to respond without knowing what the proposed standard is. However, a risk-based, proportional approach should be taken to the development of any standard. The standard should avoid deterring group structures from operating in New Zealand as they bring benefits including resources and capability of the wider group, including with respect to large scale events in New Zealand. Operational impediments may also be lower because overseas resourcing and infrastructure can be drawn upon. There may also be advantages in terms of economies of scale.

3.2.6	*We are considering proposing dividend restrictions as part of the ladder of intervention approach to solvency.* Dividend restrictions were applied by the Reserve Bank during the Covid-19 pandemic when it was concerned to protect against potential solvency issues. We do not believe those restrictions were needed as insurers did not face insolvency risks at that time. Being upfront about the circumstances in which dividend restrictions might apply (and in times when capital is actually weak) is better than the blanket approach taken during Covid, which was overly precautionary and not anticipated by the sector. It is our view that if dividend restrictions are to be applied, they should be particular to an individual insurer where there is clear evidence that the insurer is at risk of breaching its solvency requirements. Such action should be time-limited and lifted when the solvency situation is resolved. Such action should avoid the risk of investor withdrawal which may exacerbate the situation. It is also worth noting that domestic entities may look to corporate parents for support in times of need (e.g. the Christchurch earthquakes). There is no detail given on how dividend restrictions might work. If the dividend restrictions were to only apply when an insurer breaches its “prescribed capital requirements” (**PCR**), the Board would not be paying a dividend then anyway. However, if the dividend restrictions were to apply before an insurer breaches its PCR, then there are concerns over how the Reserve Bank would set the level where restrictions apply. A PCR coverage ratio would not work because under the Interim Solvency Standard insurer solvency ratios are not readily comparable due to the treatment of a number of assets (e.g. goodwill / intangibles) that are part of the PCR instead of being deducted from capital. This means an insurer with large levels of these types of assets would be expected to have a lower PCR coverage ratio than an otherwise identical insurer with smaller levels of these assets. More details on proposals around dividend restrictions would need to be given and consulted on so that industry is able to give more comprehensive feedback.
‘Overseas insurers’ - branches	
3.3.12	*We propose imposing a duty on the chief executive officer of a New Zealand branch to ensure that the insurer complies with its prudential obligations.* Differing views exist among our members, however ICNZ recognises the difficulty in imposing obligations on individuals that are located overseas.
3.3.13	*We are considering a proposal that branches hold assets in New Zealand equivalent to the New Zealand solvency standard prudential capital requirement for their risk exposures, and that life insurance branches should hold New Zealand statutory funds, with a de minimis exemption for small branches. We are still considering the costs and benefits of this proposal and would particularly value stakeholder feedback (see supplementary questions below).* We noted in our submission to the earlier consultation that ICNZ has insurer members who are incorporated in New Zealand and who operate as branches of overseas insurers. Strong views exist across our membership of general insurers on the question of whether branches should be required to hold assets in New Zealand. Some consider that current arrangements or minor enhancements to the status quo are appropriate, while others advocate for all branches to be required to have assets in New Zealand.

There are a number of complex and competing matters to consider when evaluating any assets in New Zealand requirement. Notwithstanding this, as an industry body, ICNZ considers that it is incumbent on us to share our principles-based views on this matter consistent with our vision of 'New Zealanders have trust and confidence in the insurance industry', noting that policyholder protection is fundamental to trust and confidence in the sector and the Reserve Bank must ensure that protection exists.

However, New Zealand is a country that faces significant risks which underlines the importance of being able to attract insurers to accept these risks. Imposing any assets requirement needs to be carefully considered to avert the loss of current support or to avoid acting as a deterrent to entry to the market. As noted in the consultation paper, the ability of overseas insurers to carry on business in New Zealand as branches provides some important benefits, including cross-border risk diversification. The ability to operate in New Zealand as a branch enables overseas insurers to enter the New Zealand market in a more cost-effective manner, minimising barriers to entry.

By the same token, exemptions from New Zealand requirements and reference to overseas regulations and supervisors mean that the Reserve Bank is reliant on them to a significant extent. Overseas regulations and supervisors will not necessarily have New Zealand policyholders' best interests in mind and do not always have any jurisdiction over those contracts of insurance.

Overseas supervisors may also lack awareness of unique New Zealand risks (e.g. the significant earthquake exposure) and the changing environment in New Zealand and its implications. New Zealand branches of overseas insurers may also not present a significant level of risk to the home jurisdiction attracting the same level of scrutiny as an equivalent domestic insurer business. These 'blind spots' may flow through to governance of the overseas insurer particularly when the New Zealand branch is a small part of the overall business.

We note that the Reserve Bank states that it is still considering this proposal. As noted in our submission on the first consultation paper[3], one option that ICNZ has contemplated is a targeted risk-based approach to an assets in New Zealand requirement for branches. This would mean that the Reserve Bank would have the power to impose an assets in New Zealand requirement but it would not be mandatory for all branches.

The approach contemplated would involve the Reserve Bank applying an assets in New Zealand requirement to a particular branch where it would not otherwise (i.e. by virtue of the application of existing RBNZ tools or IPSA requirements or any additional reporting) have sufficient confidence that that branch's policyholders were adequately protected. Whether or not the Reserve Bank imposed an assets in New Zealand requirement would be informed by the Reserve Bank's confidence in the overseas supervisory regime and the branch's individual circumstances.

A risk-based approach could be taken in assessing the level that the asset in New Zealand requirement is set at. ICNZ would expect that this would involve an assessment of the relevant overseas insurer's liability to New Zealand policyholders and the extent to which these policyholders are more exposed, potentially with a contingency buffer for such matters as claim

[3] ICNZ submission on Review of the Insurance (Prudential Supervision) Act 2010 (Scope and Overseas Insurers), dated 19 March 2021

	reserving errors and currency risks and tailoring to reflect its particular risk profile and capital resources involved. We note that the proposed wording in the consultation paper is to require branches to hold "assets in New Zealand". We need clarification whether the reference to "assets" is to "Total Assets" or "Net Assets". **Supplementary questions for proposal 3.3.13** *1) To what extent do you think it would be valuable to require branches of overseas general insurers to hold assets in New Zealand?* The value of requiring assets to be held in New Zealand should reflect the risk of insolvency and inability to meet obligations to policyholders. We recognise that there is a stronger case to apply such a requirement where the home jurisdiction has a policyholder preference. A proportionate approach is required. A branch of a large, well-capitalised overseas insurer operating in many countries with robust supervision in their home jurisdiction, diversified exposures, with New Zealand exposures only making up a small part, is likely to constitute a low risk from a New Zealand policyholder protection perspective. Conversely, a branch whose New Zealand exposures makes up a material part of their total business and/or who is subject to less robust supervision in their home jurisdiction, is likely to pose a higher risk from a policyholder protection perspective. *2) To what extent to you think it would be valuable to require branches of overseas life insurers to hold statutory funds in New Zealand?* We do not represent life insurers. *3) If we were to introduce assets in New Zealand requirements, would it be appropriate to follow the Australian approach to defining what is meant by assets being "held" in New Zealand? If not, what approaches might be preferable?* The Australian approach has broad criteria which we would support and provides options for the insurer. For example, liquid assets can provide income in the form of interest and physical assets such as land and buildings can provide capital appreciation. Clarity is needed about what assets "held" in New Zealand means as it could lead to undesirable outcomes. For instance, if all assets were in property, which is not readily liquefiable and potentially at risk in a catastrophic earthquake, it could mean that policyholders are less protected than they would otherwise have been. There is a case to be made that assets should be in a well-diversified portfolio including offshore securities. It may be preferable to require investments being held to support a New Zealand operation to be physically controlled by that New Zealand operator and ring-fenced accordingly. *4) How costly would it be for branches to hold assets in New Zealand? What are the nature of these costs?* We understand that some of our members who are branches will make individual submissions to the Reserve Bank on the financial impact of the proposal and impact of these costs on the attractiveness of operating in the New Zealand environment.

	Holding costs for assets in New Zealand are equivalent to opportunity costs for investing in assets of other jurisdictions where there is higher return on investment. There are other administrative costs as well to maintain a balanced portfolio of assets and to move assets from non-performing asset classes. An effective asset management function is better placed for centralised treasury structures which will be available at the overseas head offices. *5) Are there any legal problems that you can envisage arising from the assets holding proposals set out here?* We do not have any comments on this question but would be happy to engage with you further on the legal issues as the detail of any proposal is developed. *6) If we were to introduce assets in New Zealand requirements, would it be appropriate to include an exemption for small branches? Do you think that a threshold of $3million of gross premium would be an appropriate threshold for this exemption?* We have suggested that the Reserve Bank apply a targeted risk-based approach to assets in New Zealand requirements for branches. Such an approach would mean that the size of the branch would be one of the factors that the Reserve Bank would consider in deciding whether to apply the requirement in the first place. *7) Do you have views on the relative merits of an assets in New Zealand requirement versus a targeted requirement to incorporate in New Zealand, or other options to address identified risks?* We do not support a requirement to be incorporated in New Zealand. This would risk setting requirements that run counter to multi-national insurers and their structures. Requiring an exemption for New Zealand, a small market with high risks, may be counter-productive and could result in branches closing as insurers withdraw from New Zealand. There are other reasons related to efficiency and flexible access to capital why multi-national insurers adopt a branch structure approach internationally which also bring benefits to New Zealand. Holding assets in New Zealand is probably more favourable for smaller operations of overseas entities who have identified running branch operations as a more efficient operating structure.
3.3.14	*We propose that overseas reinsurers should no longer be required to be licensed under IPSA in order to do business with NZ policy holders (and so won't be required to hold assets in New Zealand).* We support this approach. Indeed, to attempt this may deter reinsurance support for New Zealand which is undesirable due to the natural hazard risks the country faces. We note that it needs to be made clear that the proposal to remove the licensing requirement only applies to reinsurers doing business with *insurers* (i.e. to reinsurance contracts).
3.3.15	*We are not making a decision on whether or not branches over a particular size should be required to incorporate at this time. Existing powers under IPSA could be used to require incorporation for large insurers so we do not need to consider this issue as part of the IPSA review. Whether or not we think incorporation is desirable will depend in part on our completed assessment of the costs and benefits of assets in New Zealand requirements.*

	We note this and would urge further consultation if this proposal is to be advanced by the Reserve Bank. As noted, care must be taken to avoid deterring offshore insurance support to a relatively small and high-risk jurisdiction.
Setting Solvency Requirements and Supervisory Adjustments	
4.2.6	*We propose that the prescribed capital requirement should apply automatically to non-exempt insurers, without the need for a specific licence condition.* We support this and agree that the prudential capital requirement should be the default solvency requirement prescribed in legislation as opposed to being a licence condition.
4.2.7	*We propose that the Reserve Bank should have the power to impose supervisory adjustments to the way the solvency calculation is carried out.* We do not support this proposal for the Reserve Bank to have the power to impose supervisory adjustments to the way the solvency calculation is carried out. Currently, there is no such provision in the current Interim Solvency Standard or the proposed Second Amendment to the Interim Solvency Standard. Imposing a supervisory adjustment on a particular insurer could result in inconsistent treatment with other similar insurers in the market. We note Reserve Bank already has the ability to impose licence conditions requiring an increase in capital/solvency margin if Reserve Bank disagrees with a solvency approach. If the Reserve Bank is to exercise a power to override an insurer's own judgement as to the risk held on its balance sheet, including the insurer's own actuarial judgement, then that opens up the question as to who is best able to make those judgements. We have concerns about this. We would argue that the insurer's Board and management team have far better insight into the company's capital requirements and their calculation. Such action by the Reserve Bank should be the rare exception. And even if the power is exercised, there must be an ability to challenge the Reserve Bank's judgement with an independent authority. We propose the review authority for these decisions be an expert tribunal and not the courts by judicial review. Judicial review permits a judge to review an act of the Reserve Bank in so far as it is in accordance with the law. This implies insurers could only challenge the way the determination was made and not the determination itself. This would be extremely limiting because it is the judgement of the Reserve Bank about the amount of risk left on the balance sheet that is the critical issues to determine, not whether the Reserve Bank was able to exercise that judgement by law. A mitigant to differences in actuarial judgement between the insurer's actuaries and the Reserve Bank's actuaries (and therefore the need to exercise this power) would be for the Reserve Bank to provide insight or guidance about application of the solvency (or other standards) when requested.
Solvency-related reporting	
4.3.4	*We propose no change to the requirement to produce section 78 reports.* We do not consider that section 78 reports are particularly useful and would have supported these reports being discontinued given other existing requirements (e.g. auditing).

4.3.5	*We will consider the best place to set out requirements for financial condition reports when producing an exposure draft.* One potential advantage of a separate standard for financial condition reports is that it may help simplify the Solvency Standard which has become long and complex. We note this is subject to further consideration and we support simplifying the process for setting insurer reporting requirements across the IPSA regime (as per paragraph 4.3.2).
Ladder of intervention, solvency and statutory powers	
4.4.9	*We propose anchoring the capital triggers for various powers closely to the MCR and PCR. We propose some powers or requirements should be unlocked when insurers breach the MCR/PCR and some should be unlocked when insurers are 'likely to breach' the MCR/PCR. That creates a framework with four trigger points.* Further guidance is required on what "likely to breach" means.
4.4.10	*We recommend that powers should be unlocked as set out in table 4.4.* *Note that we are only discussing the capital aspects of conditions for use of powers here. Some of these powers can also be triggered for other reasons. In some cases (notably statutory management), a capital-related trigger is a necessary but not sufficient condition for authorising the use of powers.* We support the introduction of a ladder of intervention approach to solvency and the exercise of statutory powers. The current approach is too binary and inflexible, so a graduated set of clearly prescribed interventions is supported. In saying that, we believe these powers should be directed to solving a problem, reasonable and proportionate, and not unnecessarily complicate matters. Powers should be exercised in a way that the trigger opens up the opportunity to exercise them, but does not make it mandatory for them to be exercised. This is critical where, for example, a company may well be able to rectify its solvency situation without the Reserve Bank pulling the trigger on administration or liquidation. ***Table 4.4 Solvency Triggers and Reserve Bank Powers***

Solvency Capital Trigger	***Power Enabled***
Likely to breach prescribed capital requirement	*Appoint actuary and auditor duty to inform Reserve Bank*
Breach prescribed capital requirement	*Direction powers* *Investigation powers* *Power to require a recovery plan*
Likely to breach minimum capital requirement	*Reserve Bank can apply to Court for voluntary administration.* *Reserve Bank can seek statutory management.*
Breach minimum capital requirement	*Reserve Bank can apply to the Court for liquidation*

We note the table only prescribes interventions with respect to breaching capital requirements but they can also be triggered for other reasons (as noted in paragraph 4.4.10 of the

	consultation paper). It will be important to consult with the sector on the exercise of these extensive powers under those circumstances. It would assist if guidelines were developed and published to transparently and clearly outline the intended usage of these powers, provide safeguards against misuse, and clarify any differences or overlaps with directions powers. In general terms, it would also provide greater transparency to regulated entities if materials were developed to clarify any overlaps or interactions between regulators regarding their respective enforcement functions with a view to reducing uncertainty and avoiding unhelpful duplication and inconsistencies. We support the power to require the appointed actuary and auditor to inform the Reserve Bank when they believe there is a likelihood of breaching the PCR. However, it is not clear what "likely to breach" means. We would urge the Reserve Bank to issue guidelines on the types of instances it would expect the duty to be exercised otherwise actuaries and auditors are likely to behave extremely conservatively and this will result in unnecessary over-reporting. We support the exercise of direction and investigation powers as well as the power to require a recovery plan if the PCR is breached. We question whether the Reserve Bank should be able to apply to the Court for voluntary administration or seek statutory management before the minimum capital requirement is breached as an insurer may be able to trade out of that position. Again we urge the Reserve Bank to issue guidance on what it considers "likely to breach" the minimum capital requirement means. We consider application to the Court where the minimum capital requirement is breached is appropriate as this will enable an independent determination of whether the powers should be exercised.
Statutory Funds and 'pure risk' life policies	
5.3.6 5.3.8	*We propose there should no longer be a requirement to hold statutory funds in relation to YRT policies.* We have no comment on life policies. *We do not propose to extend statutory funds to any general insurance lines. We also do not propose extending statutory fund requirements to health insurance.* We agree with not extending statutory funds to any general insurance lines. We also support the decision not to introduce a policyholder guarantee scheme (para 5.2.2). Such a scheme would mean higher costs to consumers risking lower uptake and consequential reduced protection for New Zealanders to cover a most unlikely event. Such a scheme could be very large indeed to protect against the failure of a large insurer. A policyholder guarantee scheme reflects a failure of good supervisory practice among other matters. Other measures proposed in this consultation, such as, the ladder of intervention and additional policyholder protections are preferred (subject to our comments that follow on each of the proposals) and adequately mitigate the need for the Reserve Bank to consider a policyholder guarantee scheme.
Enhanced policyholder security	
5.4.5	*We are considering introducing the following new 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 document where they are changed as a result of a section 53 transfer.* We have no comment on life or health policies. We support the proposal for policyholder preference in insolvency. It is critical to trust and confidence in the insurance sector that when claims are made, they are honoured under the terms of the policy. Should there be a failure of a company, then existing claimants should be given preference and those who have not made a claim have a second preference above other creditors. These policyholders have effectively paid for protection but have not had resort to making a claim. Given the value of insurance is unusual in that it is only realised at the time a claim is honoured, it is important for consumer confidence and trust that policyholders are given preference. We note that there is an interrelationship between policyholder preference in insolvency and any assets in New Zealand requirement for branches. See our comments on 3.3.13 suggesting that the Reserve Bank could adopt a targeted risk-based approach to any such requirement. We do not comment on the proposal to introduce tighter restrictions in related parties as we have insufficient detail on any proposed connected exposures standard. While in principle we understand the proposal that the Court should be able to order that some of a civil pecuniary penalty imposed on key officers should be available for policyholders, we note it will raise practical challenges. How will it be decided which policyholders receive the penalty and how much? There will also be costs involved in contacting these customers and making these payments. The costs of doing this will be additional to the penalty imposed by the Court. With respect to the final protection, based on our reading of the consultation paper, we would support the proposal to enable the Reserve Bank to take into account policyholder interests in deciding whether to approve an apportionment and to ensure that policyholders are entitled to written confirmation of the impact of any allocation so that they have a clear legal record of what has taken place. This is an appropriate, transparent and customer-centric approach to take.
New standards for governance, risk management and related issues	
6.2.2	*We propose empowering standards that allow us to introduce rules covering:* • *Corporate governance;* • *Risk management;* • *ICAAP/ORSA (to the extent those rules are necessary on top of what is already in the solvency standard);* • *Outsourcing policy;*

	• *Connected / related party exposures.* We acknowledge that the current IPSA regime sets out non-binding guidance with respect to oversight of governance and risk management. Although insurers would generally regard guidance from their supervisor as something that should not be ignored, having certainty and clarity around expectations is welcome via a standard. Regarding outsourcing policy and connected/related party exposures, please see our responses to 3.2.4 and 3.2.5.
6.2.3	*The above headings indicate the scope and coverage of the standards. The detailed content would be assessed and consulted on at a later stage, if progressed. Overall, we are intending to propose that the legislation gives us sufficient discretion to be able to implement appropriate governance and risk management rules in response to emergent risks (for example in the face of rising climate or cyber risk).* We note the intention to consult on any standards which we believe is necessary if any are progressed. It will be important to consider the range of insurers by size and business model (e.g. branch versus locally incorporated). Standards should be proportionate, avoid unnecessary compliance costs and not deter insurers from operating in the New Zealand market. We agree that it is critical to consult with the FMA to ensure there is no conflict or inappropriate overlap with conduct requirements and their overview of the same related issues (e.g. licence conditions, supervision etc).
Fit and proper regime	
6.3.4	*We propose extending the definition of 'relevant officers' to include the chief risk officer but not any other senior managers. We consider 'chief risk officer' could be defined as the person occupying the position of chief risk officer by whatever name called. This is on the basis that the position of chief risk officer is well-understood; otherwise the definition could refer to the person with overall responsibility for oversight of risk management for the entity.* The extension of the fit and proper test to the person with overall responsibility for oversight of risk management for the entity is supported. This move extends the fit and proper regime in a logical and manageable way. Such a person is responsible for compliance with the regulatory regime and therefore ought to be fit and proper to carry out that role. We would recommend using the definition of having overall responsibility rather than specifying chief risk officer. This makes it absolutely clear where the responsibility lies.
6.3.5	*We propose introducing a requirement for insurers to seek approval of the appointment of relevant officers from the Reserve Bank before appointments are made. The Reserve Bank would be obliged to decide whether to approve within 20 days of receiving all required information.* We disagree with the need for this pre-approval approach as the appointment of individuals is a duty being performed by those who are already considered fit and proper to fulfil their duties. Requiring pre-approval by the Reserve Bank seems unnecessarily intrusive. 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.

	The Reserve Bank currently has the power to challenge an appointment if it does not meet the fit and proper requirements and we do not see what is missing and therefore what this approval process would add. The consultation paper (paragraph 6.3.8) notes that there have only been a small number of cases where problematic appointments have been made. Twenty working days also appears to be an excessive amount of time for an approval. We also query how broad a 'fit and proper' challenge would be. For example, could it go to the independence of the officer? If this approach is to be taken, we would support insurers being able to make conditional appointments subject to Reserve Bank approval. This would avoid presenting challenges in securing suitably qualified staff to critical roles. We would propose that if the Reserve Bank fails to decide within the prescribed time (20 days but preferably shorter) that the insurer may proceed to confirm the appointment.
6.3.6	*We propose introducing a requirement for insurers to notify the Reserve Bank if they obtain information that could reasonably lead them to form the opinion that a relevant officer is not a fit and proper person to hold their position.* We do not agree with this because: • The requirement is vague. • Notification at the time the insurer "obtains information that could reasonably lead them to form the opinion" is too early in the process given the uncertainty of the facts at that stage. In our view, no breach should be considered to have occurred until the insurer is able on receipt of that information to make diligent inquiries to determine whether or not they could lead to someone not being fit and proper. • Regarding paragraph 6.3.11 of the consultation paper, confidentiality requirements are not the only concern under employment law. There is the risk of grievances, for example damage to reputation, if it is ultimately found the relevant officer is fit and proper.
Directors' duties	
6.4.4	*We propose introducing a new duty for directors of New Zealand-incorporated licensed insurers, to exercise due diligence to ensure that the insurer complies with its prudential obligations under IPSA and its regulations, standards, conditions of licence and directions. A breach of the duty may be sanctioned with a civil pecuniary penalty.* 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 Companies (Directors Duties) Amendment Act 2023. We do not consider this new duty is needed given there are already penalties on an insurer for failing to comply with its prudential obligations. It is also not clear what "exercise due diligence" means over and above what directors already do. Directors' duties under IPSA

	indirectly introduce a duty to ensure that the licensed insurer complies with its obligations under IPSA. 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 civil pecuniary penalties as those described in the consultation paper. The net result may be to encourage insurers to establish unnecessarily conservative risk settings to avoid the possibility of personal liability.
6.4.5	*We propose imposing the same duty on the chief executive officer of an overseas licensed insurer (i.e., New Zealand branches).* The same reasoning as above applies here.
6.4.6	*We don't propose introducing any additional specific requirements for directors to consider policyholder interests.* We support this.
Actuarial Advice and the appointed actuary	
6.5.4	*We propose that IPSA should empower an actuarial advice standard which would:* *1. require insurers to develop and document their own actuarial advice framework, setting out when actuarial advice was required for internal decisions;* *2. set out clearly the appointed actuary's duties under IPSA in a single document (potentially cross-referring to detail contained in other standards).* Previously we and the Society of Actuaries have resisted the development of an actuarial advice standard[4]. We said 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 insurers' 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. We therefore welcome a standard that asks each insurer to document their own actuarial advice framework as this accommodates each insurer's individual approach. This approach also avoids prescriptiveness. We comment on the appointed actuary duties below.
6.5.5	*We propose that IPSA should impose a duty on appointed actuaries to exercise due diligence in the performance of the duties set required of them under the actuarial advice standard.* 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

[4] ICNZ submission on the IPSA Review – Governance, Supervisory Processes, and Disclosure, dated 21 February 2023

	external audit (for example, information contained in the financial statements and Insurance Solvency Returns). Ultimate responsibility for the decision-making of a licensed insurer rests with senior management and the Board. Given that, it seems disproportionate and potentially out of step with the nature of the role for the appointed actuary to face personal liability. We note there is also already an insufficient pool of suitable candidates for appointed actuary roles and increased compliance costs are 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 is not worth running that risk.
Ratings and solvency disclosure	
7.2.5	*We propose expanding the requirements on disclosing overseas policyholder preference so that disclosure requirements are not confined to preference in insolvency but also cover any other situation in which overseas policyholders may be given preference (for example in allocating bonuses to relevant life policies).* We agree that policyholders should be provided with information about situations where an overseas policyholder preference applies. However, it is difficult to provide comment on this particular proposal given that that the consultation paper does not give any examples relevant to general insurers. The Reserve Bank should clarify where it envisages that this requirement might apply to general insurers and give stakeholders a further opportunity to comment.
7.2.6	*We do not propose other changes to these arrangements as part of IPSA Review but will consider future options for improving public and market-facing disclosure facilitated by the new data and disclosure standard discussed in section 7.3 of this paper.* We support no further changes at this stage, particularly as some of the measures previously proposed could add complexity and not necessarily be helpful for consumers. There are better ways to assist consumers and other stakeholders about an insurer's soundness and acknowledge the possibility of developing a dashboard similar to that applied to the banking sector.
A data and disclosure standard	
7.3.3	*We propose that IPSA should empower a data and disclosure standard that would be used to require insurers to provide information to the Reserve Bank or to the public, in pursuit of our regulatory objectives under IPSA. This standard would be used to set out our regular data gathering and disclosure requirements.* We are generally supportive of this approach, noting the importance of presenting comparative data to consumers which reflects the need to address differences in scale, types of insurance and types of distribution where appropriate to avoid consumer misunderstanding or misrepresentation of data. However, there should be public consultation on a data and disclosure standard, particularly on what circumstances an insurer would be required to release information to the public. 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, e.g. which other regulators/entities (including New Zealand and overseas regulators); • Under what circumstances information can be shared; • To what standard the Reserve Bank will need to be satisfied appropriate protections are in place to maintain confidentiality if it does share information; • In what circumstances the Reserve Bank is obliged to inform the entity whose information it is that the information will be shared.
7.3.4	*There would be no change to the Reserve Bank's existing suite of information gathering powers (set out in statutory notices or conditions of licence, so that we can continue gather idiosyncratic data (for example, of the type we temporarily gathered during the COVID pandemic)).* We support this approach.
Supervisory powers	
8.2.3	*We propose to introduce all the powers discussed in consultation three:* • *extending investigation powers (currently set out in sections 130 to 134 of IPSA) 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;* • *wider information gathering powers – the ability to require information from any person (not just licensed insurers and other specified persons) in pursuit of our prudential purposes under IPSA;* • *an on-site inspection power;* • *the ability to require an insurer's staff to answer questions 'on notice' as part of an investigation (as defined in IPSA section 30);* • *A breach reporting regime;* • *A power to direct insurers not to renew existing insurance contracts, in addition to the existing power to direct insurers not to write new business.* We support extending the Reserve Bank's investigation powers to cover entities that are not licensed insurers. It is critical that trust and confidence in the insurance sector is supported and there is considerable risk of reputational harm where those who are unlicenced who should be licensed or those falsely representing themselves as licensed operate. As an industry body representing our members, we oppose the extension of the Reserve Bank's powers to request information from "any person". It is critical for a membership organisation, and one that regulates its members, that it is able to operate in a way that members, who join it voluntarily, are able to share information in a secure and confidential manner. ICNZ is able to carry its role effectively in engaging on behalf of members that is appreciated by regulators, policy advisers and policymakers. It would be unacceptable if the Reserve Bank were able to exercise its powers in such a way as to undermine the ability of a forum such as ours from operating. In our view, the Reserve Bank is able to acquire the information it needs from insurers directly and should not be able to use ICNZ as a back-door alternative.

	In any event, we do not believe the Reserve Bank should be able to make the call on exercising such powers without reference to the High Court. If this power is to be exercised, then the Reserve Bank should seek a Court order to be able to exercise those powers giving the opportunity for third parties to be able to object. This would also enable the Court to prescribe what information the Reserve Bank can gather and under what circumstances. We see a role for on-site inspection in the Reserve Bank carrying out its prudential supervision (as distinct from its existing investigation powers under section 130 for enforcement activities) but note that, to date, while they have increased of late, the Reserve Banks's overall limited use of onsite inspections appears to have been more a choice than due to a lack of legal powers. In the vast majority of cases, insurers have (and we expect will continue to) willingly co-operated with the Reserve Bank to enable these inspections to be conducted in a planned and orderly fashion. When this is not the case (i.e. because consent from the insurer cannot be reasonably obtained beforehand), we strongly believe this power should not operate on a without notice basis, unless subject of a search warrant. We support the safeguards that inspections can only be carried out at reasonable times and at a regulated entity's place of business. We support an "on notice" approach and believe there should be a very high threshold for its use (e.g. cases of a severe or material breach) given the seriousness of the rights and freedoms infringed. There should be clear rules in place (either in IPSA, or in published policy/guidelines) on who could be appointed as an investigator pursuant to section 130(2), including any qualifications and disqualifying features. Consistent with the approach under AML legislation, anyone being questioned should be able to invoke privilege against self-incrimination (i.e. the right to silence) and not be required to hand over privileged information. Sufficient notice should be given so that relevant employees and directors have time to adequately prepare and, if appropriate, arrange legal representation. Additional protections should also be put in place for employees as the use of this power has the potential to be unduly intimidating and upsetting, particularly where junior staff and those who have not experienced such questioning before are involved. We query the requirement to report material breaches given the existing open and trusted relationship between insurers and the Reserve Bank. If this is adopted the Reserve Bank must provide guidance on what a material breach is and what it regards as "likely to breach" means. We consider there should be consultation on the guidance for this as we want to mitigate over reporting and having the volume of breach reporting that is seen in Australia. Regarding extending the current powers with respect to writing new business to renewals, with any exercise of this power the Reserve Bank must be guided by the ease with which relevant policyholders can obtain equivalently priced and scoped insurance cover elsewhere and/or whether any alternative equivalent arrangements can be put in place in these respects. These matters are relevant to all insurers' renewal business. In a general insurance context, we can see this being a particular issue in situations such as where: • the cover provided is novel • an accommodation has been made that other insurers may not be willing to offer • it is critical that continuous cover be maintained to be effective (e.g., claims made Directors and Officers' Liability, Statutory Liability or Professional Indemnity policies), and • an insurer's solvency issues may be linked to a natural disaster event, and not renewing policies could significantly impact an existing policyholder's ability to get cover.

	Given the broader nature of the current direction powers under section 143 of IPSA, we expect that this power could only be used when the viability of the insurer was at real risk and this action was necessary to protect policyholders.
Supervisory approval processes	
8.3.3	*We propose leaving the current arrangements for Reserve Bank approval of the restructure of a statutory fund unchanged.* We support this proposal.

8.3.4	*We propose combining the statutory tests for other significant transactions (including obtaining significant influence, change of corporate form, transfers and amalgamations) into a single approvals process.*
	
	• *The Reserve Bank will be able to decide whether or not to approve a transaction before the transaction takes effect and will be able to attach conditions to approval.*
	
	• *When making that decision the Reserve Bank may have regard to:*
	    o *whether or not the insurers involved in the transaction will continue to meet licensing requirements once the transaction is completed;*
	    o *policyholder interests; and*
	    o *any other factors the Reserve Bank considers relevant.*
	
	• *The Reserve Bank will be required to make its decision within a reasonable time after receiving all necessary information.*
	
	• *The restructuring approval process should apply to situations where a licensed insurer acquires business from a non-licensed insurer.*
	
	• *The threshold for 'obtaining significant influence' should be set at 25% of voting rights or the ability to appoint 50% of directors.*
	
	We support the streamlining to create a single approvals process. We welcome guidance on the process.
	
	An approach where the Reserve Bank approves a transaction before it takes effect is far preferable to acting after a transaction takes place. We support this.
	
	While we agree the Reserve Bank should consider licensing requirements and policyholder interests, we cannot support an open-ended statement that says, "any other factors the Reserve Bank considers relevant". It is incumbent on the Reserve Bank to clearly state what factors it would consider are relevant in order to guide those undertaking transactions. Transactions are often expensive and complex undertakings for all parties, so understanding the guiderails from the outset would avoid unnecessary costs and reputational damage if approval is denied.
	
	We question what a "reasonable" time means. What is reasonable to the Reserve Bank may be totally unreasonable if the time it takes to decide prejudices the transaction proceeding. We recommend that the Reserve Bank be very clear about the information it requires and the format it requires the information in for it to decide. It should also require applicants to advise the timeframe they believe would cause a material impact on the transaction proceeding. The

	Reserve Bank should advise within 20 business days the timeframe within which it expects to decide. The Reserve Bank should consider releasing to the applicant any material concerns as soon as they are identified, so these may be addressed as early in the process as possible. These measures will go some way to addressing the vagueness of the current wording. We agree that the restructuring process should apply to situations where a licensed insurer acquires business from a non-licensed insurer. This is logical as the Reserve Bank will already have clear oversight of an existing licensed insurer. Acquisition of another licensed insurer should be a matter for Commerce Commission approval. We support the proposed threshold for "obtaining significant influence".
Enforcement tools	
9.2.1	*We are proposing 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 us 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.* We are generally supportive of introducing a wider set of enforcement tools if that allows for a proportional and graduated approach to enforcement. The power to require insurers to publish a written warning is significant and we consider it should only be used in extreme and rare cases, given the Reserve Bank already has the ability to issue public written warnings. We acknowledge the Reserve Bank has developed safeguards and criteria to its enforcement approach and that procedurally the rule of natural justice will be applied. For completeness, we emphasise that any use of this power should: • include a clear statement why reliance upon a warning issued by the Reserve Bank itself would be insufficient. • be used in limited circumstances, and for a limited time. • provide a clear and specific understanding of what outcome is sought to be achieved from the disclosure, with regard to the wider consequences (including any uncertainty created and/or detrimental impacts from a reputation, or public trust and confidence, perspective). • ensure what is published is accurate, complete, honest and up to date. If insurers were required to publicise a warning themselves, we would not support having to fulfil this requirement in insurers' published documentation, due to the costs, resourcing and time required to do so – particularly in circumstances when the warning included may quickly become out of date.

	We support the proposed power to issue remediation notices subject to the following. It would assist if guidelines were developed and published to transparently and clearly outline the intended usage of this provision, to provide safeguards against misuse and to clarify any differences or overlaps with directions powers. It would also provide greater transparency to regulated entities if materials were developed to clarify any overlaps or interactions between regulators regarding their respective enforcement functions with a view to reducing uncertainty and avoiding unhelpful duplication and inconsistencies. We do not support the proposal for infringement notices that allow the Reserve Bank to impose modest fines for relatively minor or unambiguous breaches. This lacks relevant detail and raises many questions. What is the definition of "minor" or "modest"? Is the provision of data a day later than requested to be regarded as minor? Would that automatically require a fine to be imposed? Under what circumstances would a delay be considered reasonable? We support the use of enforceable undertakings so that insurers take remedial action which may include the payment of compensation. Such action and compensation must be proportionate to the harm caused to the policyholder. Where remediation action is also being required by the FMA, then care must be taken to avoid double jeopardy issues and excessive compensation. In principle, we support IPSA including provisions for the Court to make pecuniary penalty orders. Criminal proceedings should only be used for the most egregious breaches in our view. However, it will be critical to have clear guidance in legislation as to what is to be covered under this provision and the rationale for their use. Also, as noted in our response to proposal 6.4.4. above, we do not consider that due diligence obligations should be applied to directors that would be subject to civil pecuniary penalties.
Penalty levels	
9.3.7	*We proposed the following penalty levels:* <u>*IPSA criminal penalties*</u> *Maximum fine for business* — *$2.5m*, *$1.5m*, *$250k* *Maximum fines for individuals* — *$300k*, *$100k*, *$50k* *Accompanying max Prison sentences* — *18 months*, *12 months*, *None* <u>*IPSA civil pecuniary penalties*</u> *Maximum for an individual* — *$500,000* *Maximum for a business* — *$2.5m*

	We support the general approach taken by the Reserve Bank to steer a middle course between the maximum penalties prescribed in the Financial Markets Infrastructures Act (**FMI Act**) and the DTA. It is though an arbitrary cut through the middle which is somewhat simplistic and reflective of what the Reserve Bank considers is the ability to pay. Insurers vary considerably in size, so there is a case to distinguish those with large capital resources and balance sheets from small insurers whose characteristics would align more closely with those covered under the FMI Act. We recommend that the Reserve Bank consider a threshold based on GWP of say $25 million below which the financial penalties would be the same as those under the FMI regime. We take strong issue with the commentary in the tables on page 59 where the potential to gain by fraud for insurers is described as "very high through fraud". We are not aware of any evidence the Reserve Bank has to support this claim. In the one instance we are aware of where the Reserve Bank believed fraud had been committed, the CBL case, the Court did not find fraud had been committed. In the absence of evidence of fraud having been committed by insurers and reflecting a proportionate, risk-based approach to supervision, then a lower range of maximum fines should be considered if the perception of very high fraud risk has supported the calibration exercise. An inflationary adjustment to existing financial penalties may be more appropriate.
9.3.8	*We plan to maintain the general structure of IPSA criminal penalties, which are currently organised into 3 tiers but we will look at whether some of the lower tier criminal penalties should be replaced by either civil pecuniary penalties or infringement offences.* We support the proposal to replace some of the lower tier criminal penalties.
Purpose statement of distress management	
10.2.4	*We propose introducing a purpose clause containing the following broad purposes:* *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.* *i. By maintaining the continuity of systemically important activities carried out by licensed insurers; and* *ii. Mitigating or otherwise managing any loss of confidence in the financial system resulting from a licensed insurer that is in financial distress or other difficulties.* *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.* We support the introduction of a purpose clause for distress management. It is critical given the sweeping nature of these powers that insurers are given clear guidance on how they will be exercised. There should be published guidelines with careful consideration given to explaining trigger points and how trade-offs between competing considerations will be evaluated in determining the appropriate response.

	We support purpose 1 as a minimum expectation of distress management reflecting the need for this in the interests of all a distressed insurer's stakeholders. We support this approach set out at 2 to prevent harm to the financial system and the reputation of the insurance sector as a whole. We support purpose 3. It is critical that obligations to policyholders are met not only to protect them but also for the broader reputation of the sector. We support purpose 4 in principle but note that the "public interest" is open to very wide interpretation and potential abuse. We recommend clear guidance be issued to make it clear how this would be drawn upon. We support the principle applied at 5 where costs refer to preserving the value of the insurer, creditor interests and limiting financial risk to the Crown.
10.2.5	*We propose 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.* See our comment above.
Statutory management	
10.3.7	*We propose that IPSA should contain two sets of provisions to supplement the moratorium that already comes into play in statutory management. Those provisions are:* *1. An 'ipso facto' provision that provides that other contractual rights (such as terminating the provision of services) cannot be enforced against the entity in resolution solely because it has been placed into resolution/statutory management (even where the contract contains an 'ipso facto clause', which would otherwise create these rights); and* *2. A short term "stay" on the exercise of close out rights under derivatives contracts against the entity in resolution.* We would welcome further discussion with the Reserve Bank on the proposed 'ipso facto' provision, particularly in regard to potential impacts on the operation of reinsurance contracts and the ability to put them in place as we understand 'ipso facto' provisions exist in reinsurance contracts. For instance, an insurer under distress management will likely have reinsurance contracts and obligations. If these cannot be enforced by the reinsurer as proposed, it will be important to understand what the implications would be and whether this might impact the availability or cost of reinsurance, so a benefit analysis can be completed. In principle though, there appears to be merit in having this provision apply to other third parties in the interests of an orderly resolution. We support the short-term stay provision if exercised to support an orderly resolution.

10.3.8	*We propose 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.* We support the removal of the reference to causing significant damage to the financial system acknowledging the threshold this sets is too high and could result in harm to policyholders under circumstances where this is not met. For transparency and certainty, it will be important for the Reserve Bank to develop and publish detailed guidelines on the intended usage of statutory management. In addition to the post-event scenario where there are particular but significant regional impacts, we envisage there may be a role for this mechanism to be considered when access to a certain (e.g. specialised) line of insurance business is significantly impacted.
10.3.9	*We reserve the question of the governance of statutory management to the exposure draft stage, noting stakeholders' preference for placing appropriate reliance on a statutory manager's technical expertise.* We support further exploration of the appropriate governance arrangement, noting a statutory manager's technical expertise vis-à-vis the Reserve Bank's.
Resolution planning for insurers	
10.4.2	*We propose that IPSA should empower a standard to deal with resolution preparedness for future-proofing purposes. However, we would not expect to require resolution planning for insurers in the short-term.* We do not believe that resolution planning requirements for insurers is appropriate and would welcome further consultation on this given the reference to resolution planning not being considered in the short-term. We note the intent of the standard is to future-proof and enable the Reserve Bank to implement resolution planning. Such an approach demands that the Reserve Bank cannot exercise resolution planning without comprehensive consultation and analysis that demonstrates the need to do so.
Other issues	
11.1.3	*We propose not to alter existing exemptions for small insurers.* We support continuing the exemptions for small insurers but believe the thresholds should be lifted to reflect inflationary changes since 2010.
11.2.8	*We propose not to alter holding out and restricted words provisions.* We disagree with this proposal. The current provisions are narrowly focused on name, title, trademark, style, designation, or description that implies that a person or entity is a licensed insurer when they are not. The only reason the Reserve Bank has given for not broadening the application of restricted words to materials or product descriptions is to reference the insurance broking sector's use of such terms. We fail to see why this could not be remedied by broadening the scope, but specifically excluding products and services developed by a licensed insurer that are sold by an insurance broker. It is critical that members of the public that purchase products that are not insurance in the belief that they are (and have the full

	protection of the IPSA and FMA regimes) are not misled. This is also critical for the reputation of the sector. Section 219 of IPSA should be amended to add "insurer" to the list of restricted words. We would like to see a clear prohibition of the term "insurance" where the user of the term is selling a product that is not licensed by the Reserve Bank. We have previously submitted that while section 219 of IPSA prohibits the use of specific words in names and section 16 restricts representations of being a "licensed insurer", we believe consideration should also be given to extending this to a more general prohibition on activity and conduct by non-insurers representing themselves to customers as insurers, noting that the similar holding out prohibitions under the Financial Markets Conduct Act 2013 in relation to giving financial advice.[5] In particular, we consider that entities should be prohibited from using words like "insurer", "insurance", "insurance company", and other related terms (e.g. business interruption or liability cover), where doing so has the potential to mislead given the nature of the entity and the product(s) sold. For the avoidance of doubt, insurance intermediaries should be able to use these terms in their names (where it is not misleading for them to do so) and use these terms to describe the products they are selling, the services they are providing, and the insurers that they work with. We also consider than a requirement should be introduced for intermediaries to clearly disclose to customers that they are acting in that intermediary role rather as an insurer,[6] given this is something that we understand customers may not appreciate. There is also merit in amending section 219(2) of IPSA to include "insurer" for the avoidance of doubt. Our concern drives to the heart of consumer and public confidence in the products they are buying. The public knows when it buys an insurance product that this is supported by the weight of legislation, regulation and supervision. If they purchase products that are not subject to such regulation believing they are insurance products and come with the associated protections, then section 4(e) as well as a key purpose of the IPSA is undermined. Our proposal would be an unambiguous and clear signal that it is important to send to support public confidence in a well-regulated and prudentially sound sector.
Coordination with other agencies	
11.3.1 and 11.3.2	*In C4 we consulted on whether IPSA should include statutory provisions requiring the Reserve Bank to consult the FMA:* *1. Before issuing or revoking a licence under IPSA;* *2. When making decisions under the proposed statutory approval process for significant transactions discussed in section 8.3 of this consultation.* *We propose that IPSA should include statutory consultation requirements in the first context (licencing) but not in the second (approval of significant transactions).* We agree with the statement in the consultation paper that it is important that the two regulators ensure that the conduct and prudential licensing regimes work together properly (paragraph 11.3.4). We support the requirement for the Reserve Bank to consult the FMA

[5] Section 431G of the Financial Markets Conduct Act 2013

[6] Section 220(1)(c) of IPSA currently provides a blanket exemption from s219 requirements for those who arrange, negotiate, solicit, or promote contracts of insurance or the renewals of contracts of insurance or both (for example, a broker or other insurance intermediary).

	before issuing or revoking a licence under IPSA where the insurer also has (or will have) a CoFI licence. There ought to be reciprocal arrangements for the FMA to advise the Reserve Bank if it were issuing or revoking a licence under the CoFI regime too. As both regimes require insurers to be licensed in order to carry out their business of insurance, it is essential that there is no ambiguity around whether an insurer is able to continue operating. We support the exclusion of approval of significant transactions. These matters do not relate to conduct and are therefore not of interest to the FMA.