Insurance Council of New Zealand
40 Bowen Street
Pipitea, Wellington
6011
Email: icnz@icnz.org.nz
Website: www.icnz.org.nz

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IPSA Review
Reserve Bank of New Zealand

By email: ipsareview@rbnz.govt.nz

Kia ora

INSURANCE COUNCIL OF NEW ZEALAND SUBMISSION ON THE INSURANCE (PRUDENTIAL SUPERVISION) AMENDMENT BILL EXPOSURE DRAFT

Thank you for the opportunity to provide a submission to the Reserve Bank of New Zealand (**RBNZ**) on the exposure draft of the Insurance (Prudential Supervision) Amendment Bill.

Te Kāhui Inihua o Aotearoa | The Insurance Council of New Zealand (**ICNZ**) represents general insurers. Our members accept the risks of over NZ$2 trillion of New Zealand's assets 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, rural and agribusiness insurance, commercial property insurance, and directors' and officers' insurance).

ICNZ has been fully engaged with the RBNZ's review of the Insurance (Prudential Supervision) Act (**IPSA**) since it was initiated. Most recently we submitted in December 2023 on the Review of the Insurance (Prudential Supervision) Act 2010: Omnibus Consultation.

In this submission, we outline our responses to the consultation questions. Given the significance of the Bill for the general insurance sector, ICNZ has a number of detailed technical and drafting comments on the provisions of the Bill. These are set out in the clause by clause feedback in the table set out in the Appendix.

General Comments

ICNZ supports the overall objective of modernising IPSA and strengthening the prudential framework for insurers.

We recognise the Bill provides a range of new or enhanced regulatory tools for the RBNZ that are intended to support its more active regulatory approach. While we appreciate the utility of many of these tools, it is important that the benefits of any new tools outweigh the costs they impose, that they are appropriately scoped and calibrated to the insurance sector, that there is certainty about their potential use, and that they are applied proportionately to the insurance sector as a whole and to the individual insurers competing within it. In this submission we therefore comment not only on the creation of new regulatory tools throughout the Bill but also on the circumstances when they might and should be used.

We also note that substantial parts of the Bill mirror the Deposit Takers Act 2023 (**DTA**) regime. However, many of those provisions have not yet come into effect, and so their efficacy, workability and costs cannot yet be evaluated. Further, banks pose different risks to insurers and consistency should not be pursued as an end in itself.

A central theme of this submission is the need for the prudential regulation regime to give practical effect to proportionality. ICNZ supports the proposed addition of a proportionality principle and the requirement for the RBNZ to prepare and publish a proportionality framework. That framework should do more than restate the principle at a high level. It should provide practical guidance on how proportionality will be applied when standards are developed and supervisory powers are exercised, including how the RBNZ will take account of an insurer's size, risk profile, legal form, ownership and group structure, business model, home or parent jurisdiction supervision or requirements, and the potential implications for policyholders and the wider market. Consideration should also be given to how supervisory powers are exercised by other financial regulators under other regimes.

ICNZ's submission raises concerns about the proposed pre-approval regime for directors and relevant officers. ICNZ does not consider that the benefits of this system would outweigh its costs. Responsibility for appointing fit and proper directors and relevant officers should remain with insurers and their boards, consistent with existing governance obligations. The case for moving to a prior approval model has not been clearly established, and the proposal risks creating unnecessary delay and uncertainty in the appointment of directors and relevant officers. If the regime is progressed despite these concerns, the RBNZ should be required to decide on applications in a shorter timeframe than that proposed to mitigate the costs of this approach.

ICNZ is also concerned that some of the proposed information-gathering, investigation and breach-reporting powers are broader than necessary. In particular, powers to conduct on-site inspections without notice should be confined to exceptional circumstances and subject to appropriate safeguards. Breach-reporting obligations should be materiality-based and should avoid encouraging defensive over-reporting of immaterial or speculative matters. Similar safeguards should apply to compulsory interviews and third-party information requests.

ICNZ notes that member views are not fully aligned on the proposed ability for prudential standards to require overseas insurers to incorporate in New Zealand. This reflects the different impacts on locally incorporated insurers and overseas branch insurers. Some insurers may make their own submissions on this issue.

Finally, ICNZ emphasises the importance of a practical plan for implementation. The reforms are significant and could interact or overlap with other significant regulatory change affecting insurers. The RBNZ should consult on the scope and sequencing of the new standards. The draft standards should then be consulted on in tranches, prioritised according to importance, and commenced only after insurers and the RBNZ have sufficient time to plan for and implement the final requirements. Any standard that requires insurers to make major changes (e.g. structural change, local incorporation, assignment of liabilities or material changes to capital, governance, reinsurance or group operating arrangements) would need to be very carefully considered and should be subject to extended transition periods and appropriate transitional relief.

Consultation Paper Questions

1. Do you have any feedback on the amendments to the Act's principles?

Clause 4 of the amendment Bill will amend section 4 of IPSA (Principles to be taken into account under this Act).

ICNZ supports the proposed addition of principles requiring the RBNZ to take a proportionate approach to regulation and supervision, and to maintain awareness of overseas supervisory practice and international guidance and standards.

These additions are important and appropriate. Proportionality is essential to ensure that prudential requirements are calibrated to the nature, scale, complexity and risk profile of insurers, and that regulatory costs are justified by the benefits sought. This is particularly important in New Zealand's small and relatively isolated insurance market, where unnecessary compliance burdens may reduce competition and ultimately increase costs for policyholders.

ICNZ also supports maintaining awareness of overseas supervisory practice and international standards. International developments provide a useful benchmark and alignment can be valuable in itself, but they should not be adopted uncritically. Overseas approaches must be assessed carefully for their suitability to New Zealand's market and the insurers operating within it.

ICNZ recommends that section 4(f) be amended to provide a clearer principle of consistency of treatment between institutions. Although the current provision refers to consistency, it does not clearly explain how relevant similarities and differences between institutions should be assessed, or when differentiated treatment will be justified. Greater clarity would support more predictable and transparent regulatory decision-making, particularly where the RBNZ applies prudential requirements differently across insurers.

ICNZ also considers that the principles should more explicitly recognise competitive neutrality. The framework should support competition and avoid unnecessarily deterring participation in New Zealand's insurance market, while ensuring that regulatory settings do not create materially different prudential requirements between insurers without a clear prudential justification. This is partly reflected in section 4(f), which refers to consistency of treatment, and section 4(g), which refers to avoiding unnecessary adverse effects on competition. However, the interaction between these principles should be made clearer so that differentiated prudential treatment is justified by relevant risk-based differences, rather than by institutional form alone.

This is particularly important where proportionality settings or recognition of overseas supervisory frameworks could result in materially different prudential requirements for insurers competing in the same New Zealand market.

2. Do you have any feedback on the new definitions contained in the Bill?

ICNZ has the following comments on the definitions of "prudential obligation" and "New Zealand holding entity".

Definition of "prudential obligation"

Clause 6 introduces a definition of "prudential obligation". The definition includes obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT**) and regulations made under that Act. However, the RBNZ ceased to be an AML/CFT supervisor from 1 July 2026. ICNZ recommends that the reference to AML/CFT legislation be removed from the definition of "prudential obligation".

Definition of "New Zealand holding entity"

The intended and potential application of the new provisions relating to non-operating holding companies and New Zealand holding companies is not entirely clear from the Bill, or from the consultation paper commentary. Earlier consultations and Cabinet decisions indicated that the proposal was "intended to cover both an international group with a New Zealand parent as well as a group where the entire group is in New Zealand."

ICNZ understands that the new definition of "New Zealand holding entity" to be included in section 6 gives effect to a different policy intent. As currently drafted, the definition risks capturing intermediate holding companies because the phrase "a holding entity of an insurer" is not limited, on its face, to the ultimate holding entity. This goes beyond the scope of the earlier consultations and Cabinet's decisions and represents a general expansion of the regime.

The consultation paper accompanying the exposure draft acknowledges a shift in the RBNZ's thinking on holding entities and that further work and changes should be expected. The consultation paper indicates that the purpose of this is now that "prudential requirements may still be imposed on New Zealand holding entities". The paper recognises there is a diversity of insurer business models and structures and that the change in policy "will also allow for better tailoring of requirements to different insurer business models, and avoid legislative and operational complexity and unnecessary compliance costs for low-risk holding entities". Nonetheless, we consider that in the absence of a clear purpose for extending to holding companies, the definition should be amended to return to the scope as agreed by Cabinet.

If, however, the current definition is to be retained, before any new obligations on any holding entities are created, through standards or otherwise, there needs to be a clear policy rationale for doing so, recognising this represents a shift in an approach usually focused on licensed insurers. ICNZ accepts that there could be situations where a standard could apply to a "New Zealand holding entity" under proposed section 56. However, to ensure this is a proportionate intervention, this should only occur where necessary for prudential purposes as the nature and role of holding companies vary materially.

While it is reasonable to consider the role played by holding companies, and some other prudential regulators do so, ongoing exploration in this area without a clear focus risks imposing unnecessary and disproportionate regulatory complexity and creating ongoing uncertainty.

3. **Do you have any feedback on the amendments to the licensing perimeter and licensing regime?**

ICNZ generally supports the proposed amendments to the licensing perimeter and licensing regime. We consider that entities carrying on insurance business from or in New Zealand should be subject to appropriate prudential regulation, no matter how they are structured. In particular, we agree that all New Zealand-incorporated persons carrying on insurance business should be licensed under IPSA, regardless of whether they issue insurance contracts to New Zealand policyholders. Allowing New Zealand-incorporated entities to operate outside the licensing regime has the potential to create regulatory gaps and may adversely affect confidence in New Zealand's regulatory framework and the reputation of New Zealand as a well-regulated jurisdiction for financial services.

In addition, allowing non-New Zealand incorporated entities to provide insurance business to New Zealanders but operate outside the RBNZ licensing regime also has the potential to create regulatory gaps and adversely affect confidence in New Zealand's regulatory framework. Recent developments have highlighted the importance of ensuring that entities carrying on insurance business from or in New Zealand are subject to appropriate regulatory oversight.

Clause 74 of the Bill amends section 237 of IPSA to enable regulations to be made declaring classes of contracts or transactions to be contracts of insurance. We support this power, which could assist in addressing boundary issues and ensuring that "insurance-like" products or arrangements do not fall outside the regime merely because they do not fit within the fixed and traditional nature of the definition of "contract of insurance". Previous submissions and press reports about discretionary mutuals have highlighted the importance of ensuring that arrangements that are functionally equivalent to insurance and give rise to comparable prudential or policyholder protection concerns are subject to appropriate regulatory oversight. The proposed power would support a more level playing field, strengthen policyholder protection, and improve the flexibility of the IPSA regime as business models evolve. We note that similar designation powers are available under the Financial Markets Conduct Act 2013.

ICNZ also agrees that overseas-incorporated captive insurers and overseas-incorporated reinsurers that are not considered to be "carrying on insurance business in New Zealand" (as defined in the Bill) should not be required to be licensed under IPSA. These entities do not generally raise the same direct New Zealand policyholder protection concerns as insurers carrying on business with New Zealand policyholders.

Finally, ICNZ agrees with the position set out in the consultation paper that existing licensed insurers should not be required to be re-licensed under the amendment Bill. Amending some aspects of the legislative regime that do not alter its fundamental basis should not trigger the uncertainty, complexity and costs associated with re-licensing.

4. **Are there any additional powers the Reserve Bank should have to support an insurer to transition to New Zealand incorporation?**

There are a range of views among our members on the issue of whether branches might in certain circumstances be required to locally incorporate. Some ICNZ members may make their own submissions on this issue.

One perspective is that powers to require local incorporation are appropriate because it strengthens prudential supervision by bringing insurers fully within New Zealand's legal and regulatory framework, supports competitive neutrality (i.e. insurers competing in the same market are not subject to materially different prudential outcomes solely because of differences in legal structure or jurisdictional settings) across the sector and enhances policyholder security. Locally incorporated insurers are required to comply with New Zealand-specific capital, governance and risk management requirements that reflect local risks and help ensure resources are available to meet New Zealand liabilities.

From this perspective, the question should be assessed by reference to New Zealand policyholder protection and the resilience of the New Zealand insurance market. Where an overseas insurer writes material New Zealand risks, particularly catastrophe-exposed risks, there may be circumstances where reliance on home-state supervision and group-level capital arrangements is insufficient to ensure New Zealand interests are appropriately protected, including where overseas policyholder preferences could affect the availability of assets to meet New Zealand policyholder liabilities.

On that view, local incorporation can provide clearer accountability to the RBNZ, more direct application of New Zealand prudential requirements, and greater confidence that capital, governance and resolution arrangements are aligned with New Zealand policyholder interests.

Another perspective is that a broad local incorporation power could deter overseas insurers from participating in New Zealand's small, catastrophe-exposed market, with potential consequences for competition, capacity and insurance availability.

It has also been noted that branch participation is an important mechanism through which New Zealand can access global insurance capital, expertise and diversification. On this view, the branch model can support policyholder interests by enabling international insurers to deploy capacity into New Zealand without requiring a separate locally capitalised subsidiary for what may be a relatively small part of a global business. Particularly in a small and catastrophe-exposed market, New Zealand policyholders may be better served by maintaining access to a range of well-capitalised international insurers, provided the prudential risks of branch operation are appropriately understood and managed.

This perspective notes that RBNZ's September 2023 Omnibus Consultation only considered local incorporation as an alternative to an 'assets in New Zealand' requirement in the context of addressing domestic policyholder risks associated with overseas policyholder preferences, a requirement that was not progressed. In that consultation paper, the RBNZ stated: "We are not outlining a preferred option on whether branches over a particular size should be required to incorporate at this time." The RBNZ did not consult on the rationale for requiring local incorporation or on the relevant thresholds if such a requirement were taken forward. From this perspective, it would therefore be helpful for the RBNZ to explain what problem local incorporation is intended to solve, whether that problem exists across all branch insurers and why it cannot be addressed through less intrusive prudential tools.

The Bill empowers the RBNZ to require local incorporation through a standard, but does not set out the criteria or thresholds that would guide the exercise of that power. If such a power is progressed, members potentially affected consider that the key issue is not simply whether a branch has reached a particular size or importance threshold. While the size of an insurer's New Zealand business may be relevant, it is not, by itself, a reliable proxy for prudential risk, resolution risk or policyholder harm. Instead, any decision should take account of the broader prudential context, including the nature and scale of the insurer's New Zealand activities, the risks written, the adequacy of home-state prudential requirements and supervision, group support, resolution arrangements and the likely impact on New Zealand policyholders. For those reasons, members potentially affected consider any local incorporation power should be governed by clear statutory criteria.

Some ICNZ members may make their own submissions on this issue.

5. **Are there any additional changes that would help operationalise the new pre-approval regime for directors and officers, and the regulatory approvals regime?**

ICNZ does not support the proposed pre-approval regime for directors and relevant officers.

It is more appropriate that responsibility for appointing fit and proper directors and relevant officers remain with the insurer and its board, consistent with existing governance and fit and proper obligations. Prior approval would shift appointment decisions toward the regulator and blur the distinction between the RBNZ's supervisory role and insurers' management and governance responsibilities. It also has the potential to create tension in the RBNZ's later supervision of individuals whose appointment it has approved, create a risk of delay in appointing candidates, and is not required to align with international best practice.

Costs and benefits of this intervention are not established

The RBNZ has not identified particular evidence of insurers appointing directors or relevant officers who are not fit and proper under the current regime. We also note any such evidence is only relevant to the extent that it would have led the RBNZ to veto the appointment of a director or officer based on the information available at the time of appointment. We recognise that the pre-approval power could potentially prevent unsuitable persons being appointed. However, the issue is not simply whether this is possible, but how material a risk this is (given all the other controls in place), how likely this procedure is to address the risk, and whether the benefits outweigh the various costs.

The costs and issues created by the new process would include:

- Delays to all appointments, leading to longer key-person vacancies; uncertainty during succession; reduced ability to recruit globally; and increased compliance costs. These impacts are particularly acute for relevant officers, where a four-week approval period would add material delay to executive recruitment and onboarding, prolonging vacancies in key executive roles.
- Shifting appointment decisions away from the insurer to the regulator blurs accountability. It may also distort board decision-making. Rather than focusing on whether an individual is the best candidate, boards may be encouraged to focus instead on whether the candidate can readily obtain the regulator's approval.
- Uncertainty as to regulator expectations, including what constitutes sufficient experience, what weight should be given to past failures, and how character should be assessed.
- Risk of regulatory conservatism that could favour traditional backgrounds and experience over non-traditional expertise and innovation.
- Practical difficulties and issues where a person is moving between insurers. If RBNZ approval is pending for a material period, the person may need to remain in their current role for longer, potentially while their current insurer is unaware of the intended move.
- Assessing every director and relevant officer appointment will consume material amounts of supervisory capacity to process what will, presumably in the vast majority of cases, be routine appointment decisions. Those supervisory resources could otherwise be focused on more risk-based prudential supervision activity.

Prior approval of directors and officers is not a requirement under the International Association of Insurance Supervisors' Insurance Core Principles. ICP 5 (Suitability of Persons), Standard 5.3 provides that the supervisor must require the insurer to demonstrate initially and on an ongoing basis the suitability of Board members and senior management. However, the explanatory material that follows at paragraph 5.3.2 clarifies that pre-approval is not required. Para 5.3.2 provides:

> *"The supervisor should assess the suitability of Board Members, Senior Management, Key Persons in Control Functions and Significant Owners of insurers* ***either prior to***

changes in the positions or as soon as possible after appointment *…"* (emphasis added).[1]

We also note that Australia does not require prior approval of directors or relevant officers, including for APRA-regulated insurers. The proposed change would therefore cause New Zealand to diverge from Australian practice.

In the absence of evidence of a material problem, the proportionality and cost-benefit justification for moving to a prior approval model is not established. The proposal would duplicate checks already undertaken by insurers and add administrative burden, particularly when compared to the Conduct of Financial Institutions licensing regime where pre-approval from the FMA is not required. It is unclear what information the RBNZ would require or what appointment qualification factors the RBNZ would consider that an insurer would not have already assessed. ICNZ also makes the following observations:

- The proposed approval criteria appear to focus primarily on identifying clear disqualifying concerns, which suggests consideration by the RBNZ could be targeted and swift. Careful consideration should be given to whether pre-approval is necessary for both directors and relevant officers. The costs appear likely to be higher for officers and executives, and those officers would be appointed by boards whose members have themselves already been pre-approved by the RBNZ. This raises a question about how many layers of regulatory approval are necessary.
- The provisions in the Bill mirror those in the DTA. However, the effect of the DTA provisions cannot yet be assessed as the underpinning standards have yet to be finalised.

Other governance requirements

A requirement for prior approval from the RBNZ could complicate insurers' governance requirements. Some insurers may be required to elect their directors at an AGM, and some mutuals and co-operatives have mandates for directors (i.e. a certain number of the Board must be members or shareholders). While all candidates still need to meet fit and proper criteria, introducing a requirement for prior approval from the RBNZ would significantly complicate election processes, put an insurer at risk of not meeting its governance mandates, and could discourage candidates from putting themselves forward for election.

In practice, the only feasible way to manage this risk would be to seek pre-approval of all candidates standing for election in advance. This would create a significant administrative burden for both insurers and the RBNZ and would represent a material departure from existing governance processes. We note this issue is discussed in relation to deposit takers in clauses 155–157 of the Guidance Note Governance Standard, which was released for consultation in June 2026 but has yet to be finalised.

This issue does not appear to be explicitly addressed in the current proposal. At a minimum, consideration should be given to how potential conflicts between governance requirements and the pre-approval regime would be managed, to avoid placing insurers in a position of competing legal obligations.

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[1] International Association of Insurance Supervisors, *Insurance Core Principles and Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame)* (December 2024) (IAIS ICPs), ICP 5, Standard 5.3, para 5.3.2.

For these reasons, ICNZ remains of the view that the disbenefits of a pre-approval regime outweigh the benefits and so recommends deleting proposed new sections 34 to 37, inserted by clause 23.

Recommended timeframes

If a pre-approval regime is nevertheless progressed, changes would be needed to make it more workable and proportionate and mitigate its costs.

How this power would be implemented in practice has not yet been established, which limits submitters' ability to determine whether the proposed process, including why a 20 working day period is required by the RBNZ once all information has been submitted, noting also that this timeframe seems to be applied to all approvals regardless of nature. Our view is that the process should be as short as possible to mitigate adverse impacts (for example the period over which a licensed insurer does not have a chief executive officer, chief financial officer or appointed actuary). It is not clear, for example, why the regulator would need more than two weeks to determine whether a person is unsuitable.

Pre-approval would also only work effectively in practice if the regulator has enough skilled staff, robust and efficient internal processes and the confidence to make decisions quickly.

Given that insurers will already have vetted proposed appointees and must provide fit and proper certification, the regime should include shorter decision timeframes and clear controls on further information requests. The regulator needs to be able to make swift and clear decisions based predominantly on clear disqualifying criteria rather than engaging in prolonged reassessments of insurer appointments on criteria that it is not best placed to evaluate.

We recommend that if a pre-approval regime is progressed:

- insurers should be permitted to make conditional appointments, subject to RBNZ approval;
- the RBNZ should be required to make a decision within 10 working days by default;
- any request for further information should be made within five working days, should specify all further information reasonably required, and should be made only once;
- the grounds for declining approval should be clearly articulated and sufficiently serious with reference to a narrow set of criteria;
- the insurer and affected individual should be told the basis for any adverse decision, subject to appropriate confidentiality protections; and
- before any decision to decline approval is finalised, the insurer should be given the draft grounds for declining approval and a reasonable opportunity to provide further information or submissions in response.

Duty to notify fit and proper concerns

ICNZ does not support the proposed requirement to notify the RBNZ as soon as an insurer obtains information that could reasonably give rise to a fit and proper concern, set out in new section 40. The threshold is too early and uncertain, and risks creating employment law, natural justice and reputational issues. Any notification obligation should arise only once reasonable inquiries have been completed and the concern is reasonably substantiated. If section 40(1) remains in the Bill, which ICNZ considers it should not, ICNZ recommends it be amended as set out in the clause-by-clause analysis in the Appendix.

6. **Do you agree with the proposed procedures for issuing standards? If not, please explain why.**

ICNZ generally agrees with the proposed procedures for issuing standards in new section 56B (inserted by clause 27). ICNZ strongly supports the requirement for robust consultation with insurers and other affected stakeholders, appropriate timeframes to consider proposals, and coordination with other relevant regulators in the development of prudential standards.

A robust consultation process before any standard is issued is critical. Prudential standards can have significant operational, governance, capital, systems and resourcing implications for insurers. Early and meaningful consultation with insurers will help reduce the risk of unintended consequences and unnecessary compliance costs. It will also mitigate the risk of a standard needing to be amended after it has been issued, for example, due to unclear requirements, requirements that are not practical to implement, or requirements that are not appropriate.

ICNZ also considers that consultation on proposed standards should address how and when the standard is proposed to take effect, including commencement dates, sequencing and any transitional arrangements. This is particularly important where a standard may require material operational, governance, capital, systems or structural changes. Insurers will need sufficient time after standards are finalised to assess the requirements and implement any changes in an orderly way.

Where a proposed standard would apply to an overseas branch insurer, or an insurer that has an overseas parent (directly or indirectly), the RBNZ should be required to consider the insurer's home or parent jurisdiction, prudential obligations, and consult, where appropriate, with the home or parent prudential regulator. Standards should not duplicate equivalent home or parent jurisdiction requirements unless the RBNZ identifies a specific New Zealand policyholder protection risk that is not otherwise addressed. Duplicative arrangements, even where similar, add costs and complexity.

Section 56B(1)(d) (clause 27) warrants further consideration. While it is appropriate to have regard to relevant overseas standards when issuing solvency standards to ensure requirements do not have unreasonable impacts, this should be balanced with maintaining competitive neutrality among insurers and ensuring that standards are appropriate for the New Zealand context.

7. **Is the scope of matters that standards may cover sufficiently clear? If not, what should be added or removed?**

ICNZ considers that the categories of matters that standards may cover are generally clear. However, it will be important that standards made under these powers are scoped appropriately, principles-based where possible, proportionate, and flexible. The consultation procedures in new section 56B will be critical to ensuring that any standard is fit for purpose.

In developing standards, the RBNZ should have regard to relevant overseas requirements and supervisory approaches, including in comparable jurisdictions, as a useful benchmark. However, those approaches should not be adopted uncritically and must be assessed for their suitability to New Zealand's insurance market and regulatory context. We also caution against simply replicating or aligning with standards under the DTA given the different risk profiles of banks and insurers.

Outsourcing

ICNZ does not support a broad outsourcing standard that that could complicate appropriate and efficient corporate arrangements, particularly if it extends to all intra-group arrangements. New section 56L(a) appears unnecessarily broad if it would permit a standard to apply to all outsourcing arrangements, regardless of materiality or whether they are within an insurance group. Rather than applying to "arrangements for any business, or functions relating to any business, of an insurer", any outsourcing standard should be limited to material third-party outsourcing arrangements that could materially affect an insurer's operations, prudential soundness, or ability to meet obligations to policyholders. This would align with the approach that the FMA takes to outsourcing, where the FMA does not consider intragroup arrangements (i.e. companies within the same group structure) to be outsourcing for the purposes of Standard Condition 4 for Financial Advice Provider licences.[2]

Insurers already manage outsourcing risk through existing risk management and governance frameworks, and through obligations under the Conduct of Financial Institutions regime. ICNZ is not aware of evidence of problems under the current regime that would justify a broad outsourcing standard, particularly for intra-group arrangements. We also note the prudential risks associated with insurers and banks are fundamentally different and so the rationale for outsourcing standards developed for banks and the content of such standards will not necessarily be applicable, necessary or appropriate for insurers. The experience of bank outsourcing requirements, including BS11, should be considered carefully, and banking standards should not be transposed to insurers without regard to the different prudential risks, business models, recovery and resolution concerns, structures of the insurance sector.

The focus of any outsourcing standard should be on ensuring any genuine prudential problems are addressed at the minimum cost, rather than providing prescriptive requirements on how corporates should structure their arrangements, particularly when another regulator (the FMA) already regulates outsourcing requirements through its standard licence conditions. If not, there are risks that outsourcing requirements impose unnecessary additional costs on insurers, stifle innovation, conflict with existing operating models, reduce flexibility in crises (where additional resources are required), duplicate existing or other risk management requirements, unintentionally shift insurer focus toward process compliance rather than substantive oversight, and potentially increase supplier concentration risks (e.g., by favouring larger suppliers).

Related-party exposures

A risk-based and proportionate approach should also be taken to any related-party exposures standard under new section 56L(b). This is important to avoid deterring group structures from operating in New Zealand, given the benefits they can bring through access to wider group resources, capability, infrastructure, reinsurance support, and economies of scale, including in response to large-scale events. Operational impediments may also be lower where overseas resourcing and infrastructure can be drawn upon.

This is particularly important for trans-Tasman insurers that operate with group governance, capital, reinsurance, technology, actuarial and operational frameworks that are already subject to home or parent prudential oversight. The standards should distinguish between intra-group arrangements that could create unmanaged prudential risk and those that support resilience, capability and policyholder protection.

Governance, incorporation structure, and ownership

Standards relating to governance, incorporation structure and ownership may have significant effects on how an insurer structures its business and operations, including whether an overseas insurer is required to incorporate in New Zealand. The scope of these powers should therefore be

[2] https://www.fma.govt.nz/business/services/financial-advice-provider/fap-regulatory-returns/
Are intragroup arrangements considered to be outsourcing arrangements?
The FMA does not consider intragroup arrangements (i.e. companies within the same group structure) to be outsourcing for the purpose of Standard Condition 4.

supported by proportionate safeguards, particularly where a standard could materially constrain an insurer's ability to organise its affairs or interact with other statutory governance requirements.

Standards should not require structural change, local incorporation, or duplication of group governance arrangements unless the RBNZ has identified a material prudential risk that cannot be addressed through less intrusive measures, such as targeted reporting, licence conditions, additional attestations or remedial directions.

Finally, as a general comment, the matters proposed for each standard are highly specific. As drafting progresses, it may become clear that some matters would be more appropriately addressed in a different standard. We suggest including a provision allowing for the reallocation of matters between standards where appropriate to provide the necessary flexibility.

8. **Do you have any feedback on the requirements on the RBNZ when preparing and publishing a proportionality framework?**

ICNZ agrees that the RBNZ should be required to prepare and publish a framework for taking the proportionality principle into account when developing standards. We therefore support the requirement for a proportionality framework in new section 56D (inserted by clause 22). Proportionality is also important in the operation of the IPSA regime more broadly, and ICNZ would welcome a broader scope in the application of the proportionality framework.

ICNZ does not necessarily seek detailed legislative prescription of the framework's contents. However, the framework will only be meaningful if it provides practical guidance about how the RBNZ will exercise discretion when developing and applying standards.

In ICNZ's view, the framework should do more than restate the proportionality principle at a high level. It should explain how proportionality will be applied in practice when developing standards and exercising regulatory powers. Insurers should be able to understand the factors that will influence regulatory expectations, the circumstances in which differentiated treatment may be appropriate, and how the RBNZ will balance prudential objectives against compliance costs, competition impacts, and the practical realities of operating in New Zealand's insurance market.

The framework should also require the RBNZ to assess whether each proposed regulatory measure is itself proportionate, including whether the expected prudential benefits of the intervention justify the compliance costs, operational impacts, competition effects and other consequences for insurers and policyholders.

Consideration should also be given to how supervisory powers are exercised by other financial regulators for other regimes, for example, by the FMA for the conduct licensing regime, so that the cumulative intensity, frequency and formality of regulatory interactions with an insurer remains proportionate to its size and risk profile. Proportionality should be assessed by reference to the total regulatory burden on insurers, not only the incremental burden of an individual prudential standard or power.

The framework should identify the key factors that the RBNZ will take into account when applying proportionality. These should include the insurer's size, nature of the business underwritten, risk profile, legal form, ownership or group structure, business model, sophistication of governance, and the potential implications for policyholders and the wider market. Within the insurance sector, there is also the need to consider the different nature of general, life and health insurers.

The framework should also recognise that proportionality is not solely a function of size or home/parent jurisdiction supervision. In some circumstances, an insurer's business model, legal form or group structure may create distinct prudential or policyholder protection considerations. For overseas branch insurers and insurers that form part of wider groups, relevant factors should include the effective availability of assets to support New Zealand liabilities, cross-border resolution considerations, the accessibility of reinsurance arrangements, and the degree of local operational and governance capability. These factors should inform whether differentiated treatment is appropriate and help ensure that proportionality settings support competitive neutrality and do not produce materially different prudential outcomes for insurers competing in the same market without a clear policy justification.

The framework should provide sufficient transparency to help insurers understand how proportionality will be applied in practice.

The framework should also expressly require the RBNZ to consider:

- whether the issue can be addressed through targeted licence conditions or remedial powers rather than structural change;
- potential impacts on competition, including competitive neutrality, market capacity, New Zealand policyholder protection, choice and affordability;
- whether an insurer is subject to comparable home jurisdiction or insurer parent jurisdiction prudential supervision;
- the extent of existing RBNZ reporting, engagement and supervisory visibility;
- whether additional or differentiated requirements are necessary to address New Zealand prudential or policyholder protection risks, and why.

It will be essential for the RBNZ to consult with insurers and other affected stakeholders on the development of the framework. A clear and well-designed framework should support more predictable, proportionate, and workable standards, and help ensure that the principle of proportionality has practical effect.

9. **Do you have any feedback on the provisions relating to infringement notices, supply and reporting of information and investigations powers?**

ICNZ agrees that the RBNZ should have appropriately targeted information-gathering and investigation powers to support effective perimeter supervision and address suspected unlicensed insurance activity.

How infringement notices may be served

The methods for serving infringement notices in new section 137Y, inserted by clause 47, rely largely on physical delivery, except where the person has no known place of residence or business in New Zealand. This approach is outdated and misaligned with modern business practice. ICNZ recommends expanding the circumstances in which infringement notices may be served electronically.

Publication of reports

New section 123, inserted by clause 40, would empower the RBNZ to require an insurer to provide a report prepared by an RBNZ approved person. New section 125 would then allow the RBNZ to require an insurer to publish that report. This publication power is new and has no equivalent in the current version of IPSA. ICNZ is concerned that section 125 does not provide sufficient safeguards on the face of the Bill to protect personal, commercially sensitive, or legally privileged information. Publication of a report prepared for supervisory purposes could have material reputational, commercial or market consequences, particularly if the insurer contests the report’s findings or the report contains confidential information relating to the insurer or third parties.

The Bill should therefore expressly require the RBNZ to consider the nature and sensitivity of the information before giving a publication direction, allow the insurer a reasonable opportunity to make representations, and enable publication of a redacted or summary version where appropriate. Section 125 should therefore be reconsidered to ensure appropriate protections are included in the legislation.

On-site inspections without notice

ICNZ recognises that on-site interactions can be valuable (and happen now with notice) and that there are some extreme cases where an ability for the regulator to conduct on-site inspections without notice may be warranted. However, ICNZ does not support the proposed power for the RBNZ to conduct on-site inspections without prior notice, consent, or a search warrant (new section 129E, inserted by clause 40).

This power engages section 21 of the New Zealand Bill of Rights Act 1990, which protects against unreasonable search and seizure. In ICNZ's view, the concern is not only how the power might be exercised in practice, but that the statutory authorisation itself is too broad. A regulator's obligation to act consistently with NZBORA is not an adequate answer to an overly broad search or inspection power; such powers should be drafted so that their ordinary operation is reasonable, rather than relying on the regulator's restraint in exercising them.

Although new section 129D provides a purpose for the inspection regime, it is both very broad and does not adequately constrain the threshold for entry or the circumstances in which entry without notice may occur. In particular, the test in section 129E(1), which allows entry where the RBNZ considers it "necessary or desirable", is too broad and subjective for a coercive entry power. The inclusion of "desirable" materially weakens the connection between the power and necessity. The Bill does not require any objective trigger, such as reasonable grounds, urgency, obstruction, or inability to obtain the relevant information through less intrusive means. Nor does it provide that there should generally be prior notice subject only to limited exceptions such as where notice would materially defeat the purpose of an on-site inspection.

Some of the purposes in section 129D are themselves broad, including examining "any matter" to understand risks and carrying out reviews of all, or classes of, licensed insurers. Section 129D(g) is particularly disproportionate because it would allow without notice on-site inspection powers to be used for sector-wide or class-based reviews, rather than only in relation to insurer-specific concerns. A sector-wide or thematic review is a much weaker basis for warrantless entry without notice and could be highly unproductive if undertaken at a time or location when relevant people are not present. Should an on-site inspection power without notice be progressed, we therefore consider that section 129D(g) should be deleted.

The drafting of the Bill has moved a long way from the IPSA omnibus consultation paper, which stated (at page 53 – emphasis added):

> *"8.2.10 In the vast majority of cases, on-site inspections would be carried out as part of ordinary supervisory activity. They provide an opportunity for face-to-face exchange and more sustained engagement with regulated entities. They are a common mechanism in many overseas jurisdictions.* ***Insurers would be given notice*** *and informed about the kinds of information supervisors were interested in.*
>
> *8.2.11* ***A power to conduct on-site inspections without notice would only be used in unusual circumstances,*** *where the insurer was reluctant to voluntarily accept the inspection. As with the Reserve Bank's other powers, they could only be used where it was reasonable and proportionate to do so."*

These limitations have all been omitted from the Bill. We note the case for intrusive inspection powers is different from banking, as insurers do not pose the same risks to the immediate stability of the financial system and both the frequency and pace of customer transactions are lower. The operational realities of modern insurance businesses — including multiple sites, cloud-based systems, and remote working arrangements — also often mean that prior notice would be necessary to ensure an inspection is efficient, secure, and properly informed with the right people available to discuss matters with the regulator present.

In ICNZ's view, the default position should be that on-site inspections occur on notice and in cooperation with the insurer. If a no-notice power is retained, it should be confined to clearly defined exceptional circumstances where notice would materially prejudice the inspection and should be subject to a court-issued warrant and express statutory safeguards. Those safeguards should include a tighter threshold for entry, clearer limits on the purposes for which no-notice entry may occur, and appropriate protections for legally privileged and irrelevant material. Post-event remedies such as judicial review or declarations of inconsistency are not adequate substitutes for careful statutory design.

The offence provision in new section 129G should also be narrowed. As drafted, it would make it an offence to "resist, obstruct, or delay" an inspection, and could capture reasonable and necessary steps taken by an insurer to respond to an inspection properly. The provision should include a clear carve-out for reasonable requests for time to locate relevant records, obtain legal advice, identify whether material is legally privileged, or arrange for relevant personnel to be present. Those steps should not be treated as obstruction.

Should the very broad and insufficiently constrained on-site inspection powers nonetheless be progressed in the Bill, it will be important that the RBNZ publishes a clear policy outlining how it will prudently and appropriately apply these powers in practice.

Compulsory interviews

ICNZ considers the proposed compulsory interview power in new section 129F requires stronger statutory safeguards. The omnibus consultation paper stated that the expectation was that there would be "formal interviews, with advance notice, with appropriate safeguards and a full opportunity for legal representation". Those protections are not reflected in the Bill and should be expressly included. If the RBNZ is to compel answers from employees, directors or agents, the Bill should require reasonable notice, preserve the right to legal representation, and provide appropriate protection for legal privilege and other applicable rights.

Third-party information

New section 121 empowers the RBNZ to require "any person" to provide information. ICNZ does not oppose a more explicit power to request information from third parties where the information cannot reasonably be obtained from the insurer itself. However, this power should be used only where necessary, and the insurer should generally be notified before the RBNZ approaches a third party so the request can be understood, tested, and, if appropriate, refined.

Breach reporting

ICNZ is also concerned that the proposed insurer breach-reporting obligation (new section 129I) is framed too broadly and speculatively. As drafted, it risks defensive over-reporting, which would impose unnecessary burden on insurers and may reduce the usefulness of reporting to the RBNZ by obscuring genuinely material issues. The reporting threshold should instead focus on material contraventions of specific referenced clauses that the insurer believes have occurred (as opposed to when the insurer believes there may have been or is likely to be a contravention).

Reporting on breaches of 'any prudential obligation' could also lead to over reporting or inconsistent reporting given the scope that this covers, particularly where the breach has no material impact and is quickly rectified. Consideration should be given to only requiring reporting of breaches of specified sections under IPSA that may have a material impact to ensure the efficient use of both the RBNZ's and insurers' resources. Breach reporting should also be focused specifically on insurance prudential regulation matters and not matters that are subject to the requirements of other regulators, for example, material cyber incident reporting is currently required by the FMA but also the RBNZ which creates inefficiencies as an insurer is subject to different questions from, and subsequent engagement with, two regulators.

Consideration should also be given to how the more speculative aspects of this obligation will operate in the context of a large natural catastrophe. In the face of a major disaster, it may take time to determine the cost of the event and then the impact on an insurer's reinsurance programme and on its solvency position. ICNZ would welcome and encourage guidance on how the obligation would apply in practice.

Disclosure of information to the RBNZ by auditors and actuaries

ICNZ is concerned that the proposed reporting trigger for auditors and actuaries in new section 129, inserted by clause 40, is too low and may encourage reporting of immaterial matters. The provision should include clearer reasonableness and materiality thresholds. Suggested drafting changes to clause 40 are set out in the Appendix.

10. Do you agree with the scope of offences that have *mens rea* requirements? If not, please explain why.

ICNZ generally agrees with the proposed scope of offences that include a *mens rea* requirement. Fault elements are appropriate for offences that attract greater criminal stigma or more serious penalties.

In particular, ICNZ supports the inclusion of a *mens rea* requirement for offences relating to:

- carrying on insurance business in New Zealand without a licence;
- holding out as a licensed insurer when not licensed;
- contravening a remedial notice, failing to provide an amended remedial plan, or failing to take required steps under a remedial plan;
- wrongful disclosure of confidential information, data, documents or forecasts, and contravention of restrictions on further disclosure;
- making false declarations or representations to the RBNZ; and
- participation in insurance business by a banned person.

11. Do you agree with how the penalties table has been applied to individual offences? If not, please explain why.

ICNZ has no comment on this question.

12. Are there any changes you would suggest to how the distress management purposes or changes to direction powers have been set out in the Bill?

ICNZ supports the inclusion of statutory distress management purposes in new section 137ZM, inserted by clause 47, and agrees that clear statutory purposes are important given the significance and breadth of the powers in this Part. However, the purposes and associated direction powers should be more clearly tailored to the insurance sector and should not simply replicate approaches developed for deposit takers. In particular, the "public interest" should not operate as a broad basis for intervention and would benefit from clearer statutory guidance or published supervisory guidance as to how it will be applied in practice.

ICNZ also considers that the expanded direction powers in sections 143 to 145 (see clauses 50 to 52) must be exercised in a proportionate and insurance-specific way. The Bill should make clearer that such powers are to be used only where reasonably necessary to address identified prudential or policyholder protection concerns.

13. Do you have any comments on the new resolution provisions in the Bill?

ICNZ acknowledges that the exposure draft includes some important safeguards in the resolution trigger. These include a requirement for likely significant financial system or policyholder harm in new section 174, inserted by clause 62, and the further requirement in section 174(2) that the RBNZ be satisfied that policyholders, the public interest or the financial system cannot be adequately protected under other available tools. These safeguards are welcome and go some way to addressing concerns about threshold and last resort use. (However, see our concerns about the reference to the "public interest" above.)

From a drafting perspective, ICNZ is concerned that splitting the resolution provisions between new sections 170 to 199C and new Schedule 2 makes the regime harder to understand and apply (noting that they are not split in the DTA). These are significant powers, and the Bill should enable insurers, policyholders and other affected parties to identify the relevant triggers, powers, safeguards and process without having to move back and forth between separate parts of the legislation. If the provisions remain split, the Bill should include clear cross-references and signposting to improve readability and reduce the risk of uncertainty.

Where resolution or direction powers are applied to an overseas branch insurer and could require assignment of New Zealand liabilities, local incorporation, or other structural change, the Bill should require the RBNZ to consider the insurer's branch structure, home jurisdiction resolution framework, home prudential supervision, capital and reinsurance arrangements, any overseas policyholder preference rules, and the practical implications for New Zealand policyholders. The RBNZ should retain the ability to act where necessary to protect New Zealand policyholders, but any New Zealand-specific intervention should be proportionate and directed to a clearly identified prudential or policyholder protection risk, particularly where comparable home jurisdiction requirements already apply.

14. Are there any resolution provisions that you think might not be appropriate for insurers or require further tailoring to the insurance context, including for statutory funds?

ICNZ queries the reference to "minimum capital requirements" in clause 11(c)(i) of Schedule 2, which appears to replicate the drafting in the DTA. We suggest considering whether these provisions should refer expressly to the applicable prudential margin and/or solvency margin requirements.

15. Do you have any feedback on how best to implement and manage the transition to standards and the change in regulatory perimeter?

ICNZ supports a staged and carefully sequenced approach to implementing the new standards framework and the proposed changes to the regulatory perimeter. Given the breadth of the reforms, standards should be prioritised according to risk and materiality, consulted on in tranches, and commenced only after insurers have had sufficient time to implement any new requirements in an orderly way.

In particular, insurers will require adequate lead-in time not only from enactment of the Bill, but from the point at which the content of relevant standards is finalised. The practical implementation burden will depend heavily on the final form of those standards. Insurers cannot fully understand the requirements until those standards are finalised.

Some standards may require more fundamental changes to insurers' legal structures or operating models, including local incorporation, assignment of liabilities, changes to legal form, or material changes to capital, reinsurance, governance or group operating arrangements. In those cases, implementation timeframes and sequencing will be particularly important to ensure changes can be delivered in an orderly way. Any such standards should be subject to an extended transition period, early consultation, clear thresholds, grandparenting or transitional relief where appropriate, and sufficient time after final standards are issued for insurers to assess feasibility, obtain approvals, and implement any required structural changes. Commencement dates should, where possible, align with existing reporting cycles or established operational processes to reduce avoidable complexity and compliance burden.

ICNZ also considers that the RBNZ should consult on a clear implementation roadmap, including the proposed sequencing and timing for developing standards and potentially bringing them into effect. The proposed late 2028 commencement date for the Act (with later commencement dates for some parts of the Act and for the standards) may ultimately be appropriate, but that should be reviewed once the Bill's likely enactment date and the scope and timing of standards development are clearer. This is particularly important given that the Bill is not expected to be introduced into Parliament until sometime in 2027 and the insurance sector is also implementing other significant regulatory changes, including the Contracts of Insurance Act 2024.

16. Do you have any other comments or feedback on the Bill?

ICNZ has a small number of additional comments on the Bill. We also provide proposed clause by clause amendments in the Appendix.

Scope of prudential standards

Section 56L(c), inserted by clause 27, provides that standards may regulate "any other matters that may be prescribed in the regulations". It is important that any regulation extending the matters for which prudential standards may be made is consulted on and is proportionate and tailored to the insurance sector.

Alignment of standards with the DTA regime should not be pursued as an end in itself, given the significant differences between the banking and insurance sectors, including in relation to concentration risk.

Application of prudential standards to New Zealand holding entities

The Bill enables prudential standards to apply to New Zealand holding entities (new section 56M, inserted by clause 27). While this may provide useful flexibility, the current drafting appears broad and could, in practice, approximate a full regulatory regime for holding companies. In our view, any application to holding entities should be clearly grounded in a risk-based, case by case assessment, rather than applying on a blanket basis. Consideration could be given to framing these powers on an exception basis, with clearer criteria guiding when standards should apply. Note also our comments above in response to Question 2 regarding the definition of "New Zealand holding entity".

Prohibiting the use of certain words in company names

ICNZ considers that section 219 of IPSA should be amended to add "insurer" to the list of restricted words, to reduce the risk of misleading use of that term by entities that are not appropriately licensed or regulated.

Financial strength ratings

ICNZ considers there is an opportunity to modernise and refine the current financial strength disclosure requirements so that they are more effective and efficient for insurers to comply with and easier for policyholders to engage with.

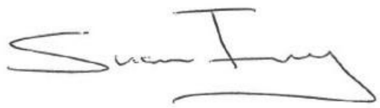
Specifically, to reflect modern practices for the dissemination of information, the requirements in section 64 (Disclosure of current rating to policyholder) should be amended so that, rather than setting out the full details within the disclosure itself, the disclosure should simply refer the policyholder to the relevant insurer's website and the RBNZ's website, where they can easily obtain accurate, up-to-date information at any time. This would also reduce costs when, for example, an insurer must incur additional system and printing costs to reflect a ratings upgrade.

Further, section 69 (Licensed insurer must give public notice of downgrade or notice to policyholders) should be modernised to remove the requirement that, where an insurer elects to give public notice of a financial strength downgrade, the notice must be published in daily newspapers circulating in Auckland, Hamilton, Wellington, Christchurch and Dunedin. Publication on the insurer's website and the RBNZ's website should be sufficient.

Conclusion

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

Ngā mihi,



Susan Ivory
Regulatory Affairs Manager
Insurance Council of New Zealand

Appendix: Clause by clause feedback on the Bill

<table>
<tr><td>4</td><td>Section 4 amended (Principles to be taken into account under this Act)</td></tr>
<tr><td></td><td>See our response to question 1 above.</td></tr>
<tr><td>6</td><td>Section 6 amended (Interpretation)</td></tr>
<tr><td></td><td>Clause 6 introduces a definition of "prudential obligation". It is not evident why the definition of "prudential obligation" includes obligations under the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009 and regulations made under that Act. ICNZ recommends that the reference to AML/CFT legislation be deleted from the definition of "prudential obligation".

The definition of "New Zealand holding entity" should be amended to return to the scope agreed by Cabinet. As currently drafted, the definition risks capturing intermediate holding companies because the phrase "a holding entity of an insurer" is not limited, on its face, to the ultimate holding entity. This goes beyond the scope of the earlier consultations and Cabinet's decisions and represents a general expansion of the regime.

The definition of "overseas licensed insurer" has been introduced but it is not clear what the practical implications of the distinction between this and the definition of 'overseas insurer' are. We note that section 38 requires an "overseas licensed insurer" to notify the RBNZ if a new director or relevant officer is appointed. However, section 38A which provides an exemption from this refers to "overseas insurers" (rather than "overseas licensed insurers").

We question whether the terms "prudential margin" and "solvency margin" are the best terms to use as they could be easily confused and because the term solvency margin is being used in a different way from how it is currently used. We suggest consideration is given to using terms such as "minimum solvency requirement" and "prescribed solvency margin" instead.</td></tr>
<tr><td>22</td><td>Section 31 amended (Assignment of liabilities to enable cancellation)</td></tr>
<tr><td></td><td>Clause 22 amends section 31 extending the RBNZ's power to direct an insurer to assign its liabilities beyond facilitating licence cancellation to implementing an incorporation structure standard. Section 31 contains no express requirement for the RBNZ to give prior notice, reasons or an opportunity to make submissions before giving a direction, although section 22(3) and new section 43C impose comparable requirements for licence conditions and decisions to remove directors or relevant officers. Section 31 should be amended to include equivalent statutory safeguards.</td></tr>
<tr><td>23</td><td>Sections 34 to 43 replaced</td></tr>
<tr><td></td><td>ICNZ recommends deleting the proposed new clauses 34 to 37 of the Bill:
Clause 34 – Licensed insurer must obtain Bank's approval before new director or relevant officer is appointed
Clause 35 – Offence to appoint new director or relevant officer without approval
Clause 36 – Bank's decision on approval
Clause 37 – Bank may suspend director or relevant officer if approval not obtained
If the RBNZ takes forward a pre-approval regime, which we do not support, we recommend that the fit and proper provisions be amended to provide:</td></tr>
</table>

	- insurers are permitted to make conditional appointments, subject to RBNZ approval; - the RBNZ should be required to make a decision within 10 working days by default; - any request for further information should be made within five working days, should specify all further information reasonably required, and should be made only once; - the grounds for declining approval should be clearly articulated and sufficiently serious with a reference to a narrow set of criteria; - the insurer and affected individual should be told the basis for any adverse decision, subject to appropriate confidentiality protections; - before any decision to decline approval is finalised, the insurer should be given the draft grounds for declining approval and a reasonable opportunity to provide further information or submissions in response. ICNZ recommends amending the wording of new section 40(1) that requires the insurer to report breaches. This wording is vague and risks the need for notification to the RBNZ when there is <u>not</u> certainty of facts. This also raises a risk of litigation, such as for damage to reputation, if it is ultimately found that the director or relevant officer is fit for purpose. If new section 40(1) remains in the Bill (which we consider it should not), then it should be re-drafted as marked below: *This section applies if a licensed insurer becomes aware of information ~~on the basis of which it could reasonably form the opinion~~ that a director or relevant officer of the insurer is not~~, or is not likely to be~~, a fit and proper person to hold the relevant position.*
24	Sections 44 to 53 and cross-heading above section 44 replaced
	Section 44 Person who obtains significant influence over licensed insurer must obtain Bank's approval For a larger insurer, intra-group restructures may trigger the threshold even where there is no change in ultimate beneficial ownership or control. The Bill should exempt transactions that do not result in a change of ultimate beneficial ownership. The alignment with the DTA is noted, but the insurance context is different – the concern should be changes that could affect the prudential soundness or governance of the insurer, not merely minority shareholding movements. **Section 47(2)(c) – Definition of "significant transaction"** The Bill allows standards to specify additional categories of significant transactions which require approval. Any standard made under section 47(2)(c) should be required to specify transactions that are of comparable significance to those already listed in section 47(2)(a)-(b), i.e., transactions that result in the transfer of all or a material part of the insurer's business. The standard should not capture routine commercial transactions. **Section 51 – Offence of failing to obtain approval** The offence applies where a person contravenes section 44 or sections 46-48 and "knows that or is reckless as to whether" approval is required.

	The Bill or the applicable standard should clarify how the *mens rea* requirement applies in practice where uncertainty exists about whether a transaction is "material" under a standard (see section 47(2) and (3)). A person cannot "know" they must obtain approval if the standard is unclear or if the materiality threshold is ambiguous. A safe harbour should apply where the insurer has sought advice and reasonably concluded that approval was not required similar to the defence available under section 137M. **Section 53C – Approval if conditions met** Section 53C requires the RBNZ to consider whether, if the proposed change occurred, it would still be satisfied of the section 19 licensing matters, and (for significant transactions and amalgamations) to have regard to the interests of policyholders. Satisfying these considerations does not, however, appear to compel the RBNZ to provide approval. The RBNZ could, in principle, be satisfied that the licensing matters would still be met and that policyholder interests are not adversely affected, and still exercise its discretion to refuse approval for other reasons. Given satisfying this is the primary criterion for granting approval under the Bill, it would be logical to require the RBNZ to give its approval if satisfied of those matters. **Section 53D(2) – The 20 working day decision period** This section provides that the RBNZ must decide within 20 working days of receiving "all of the information that the Bank reasonably requires" and all reports it has arranged to receive. The Act or applicable standards should also provide mechanisms for time-sensitive commercial transactions such as acquisitions. **Sections 54C – Appeals against other decisions of Bank on questions of law only** We note a decision to decline approval under Subpart 1A may be appealed only "on a question of law" (see section 54C). By contrast, a decision to decline a licence or to decline approval of a director or relevant officer may be appealed on a full merits basis (section 54B). The distinction between full merits appeal (section 54B licensing and fit and proper) and question of law only appeal (section 54C approval decisions) is not clearly outlined. A decision to decline approval for a significant transaction or amalgamation can have substantial commercial consequences. Limiting review to questions of law means the RBNZ's factual findings and exercise of discretion are seemingly unreviewable. This is a lower standard of accountability than applies to comparable decisions under the Commerce Act (where decisions about mergers and acquisitions are subject to full merits review by the High Court). Accordingly, decisions under Subpart 1A should be subject to full merits appeal to the High Court, consistent with the approach taken for licensing decisions. **Uncertainty regarding appeal right against substance of licence conditions** Section 54C(a) allows appeals against decisions to impose conditions on a licence. However, it is not clear whether this extends to the substance of the condition. For example, the RBNZ is entitled to impose conditions relating to prudential and solvency margins (sections 21(2)(ca) and (cb)). However, it is not clear whether the licensee can appeal the particular margin imposed.

	Section 54D Appeal does not operate as a stay Section 54D provides that an appeal does not stay the decision unless the High Court orders otherwise. The Bill should include a provision enabling the applicant to seek an urgent interim stay.
27	Sections 55 to 59 and cross-heading above section 55 replaced
	In relation to section 56, we accept that there could be situations where a standard should apply to a "New Zealand holding entity" however this should only occur where this is necessary. We understand that the apparent intention of section 56B(1)(d) is to require the RBNZ to have regard to relevant overseas solvency and capital standards so that neither overseas insurers nor New Zealand-incorporated insurers are unreasonably disadvantaged as a result of differences between jurisdictions. If that is the intended effect, we suggest clarifying the explanatory material or the drafting of sections 56B(1)(d) and 56B(2). As currently drafted, section 56B(2)(b) defines "relevant overseas standards" by reference to the home jurisdictions of overseas insurers, which may leave some uncertainty as to how the provision is intended to operate in relation to New Zealand-incorporated insurers. As a general comment, the matters proposed for each standard are highly specific. We are concerned that, as drafting progresses, it may become clear that some matters would be more appropriately addressed in a different standard. We suggest including a provision that allows for the reallocation of matters between standards where appropriate, to provide the necessary flexibility.
29	Section 64 amended (Disclosure of current rating to policyholder)
	See our comments on the financial strength ratings requirements in our response to question 16 above.
40	Sections 121 to 129 replaced
	Section 125 – Reports required to be published The Bill permits the RBNZ to require an insurer to publish a report (or part thereof) prepared under section 123. The power to compel publication of reports should be subject to express safeguards protecting commercially sensitive, legally privileged, and market-sensitive information. A right to make representations before publication should be included in the Bill. **Section 129 – Disclosure of information to Bank by auditors and actuaries** We consider that a threshold is required in new section 129(2) as there is a risk that very minor breaches will be reported. It is also not evident to us that an auditor or actuary will be well placed to assess when a defence may apply. We recommend adding the word 'reasonable' and 'materially' to the text as set out below: 129 Disclosure of information to Bank by auditors and actuaries ... (2) Person A must disclose to the Bank information relating to the affairs of the licensed insurer or associated person obtained in the course of holding office as auditor or actuary if in the reasonable opinion of person A.

(a) the licensed insurer or associated person–

(i) has <u>materially</u> contravened a prudential obligation; or

...

We also recommend the following amendments to section 129(2)(b).

(b) the disclosure of the information is ~~likely to assist or be relevant to, the performance or exercise by~~ <u>in the reasonable opinion of person A material to</u> the performance or exercise by the Bank of its functions, powers, or duties under this Act.

Section 129E – Bank may conduct on-site inspections

ICNZ does not support the proposed power for the RBNZ to conduct on-site inspections without prior notice, consent, or a search warrant (new section 129E) – as outlined in detail earlier in this submission. If a no-notice power is retained, it should be confined to clearly defined exceptional circumstances where notice would materially prejudice the inspection and should be subject to a court-issued warrant and express statutory safeguards. Those safeguards should include:

- a tighter threshold for entry;
- clearer limits on the purposes for which no-notice entry may occur;
- a requirement to specify the scope of any on-site inspection in writing; and
- appropriate protections for legally privileged and irrelevant material

If a no-notice power is retained, new section 129D(g) should be deleted because there is no rationale for an inspection without notice to be conducted for a thematic review.

Section 129F – Person may be required to answer questions or give information

ICNZ also considers that the proposed compulsory interview power in new section 129F requires stronger statutory safeguards. No-notice interviews should be confined to extraordinary circumstances and with a court warrant. At a minimum, the Bill should require reasonable notice, preserve the right to legal representation, and provide appropriate protection for legal privilege and other applicable rights.

Section 129G – Offences relating to on-site inspection

ICNZ recommends that section 129G which makes it an offence to "resist, obstruct, or delay" an on-site inspection should include an express carve-out for reasonable requests for time to locate relevant records, obtain legal advice, assess whether material is legally privileged, or arrange for relevant personnel to be present.

Section 129I – Licensed insurer must report contraventions

New section 129I is vague, speculative and could lead to over reporting unless there is a clear understanding of materiality (which would be inefficient use of resources of both the insurer and the RBNZ). Section 129I(1) should be amended as follows:

This section applies if a licensed insurer believes that it has contravened~~, may have contravened, or is likely to contravene~~ a prudential obligation in a material respect.

Guidance should be issued on what constitutes a material contravention.

Section 129J – Offence of failure to monitor compliance and report contraventions

	Section 129J makes it a criminal offence to fail to monitor compliance and report contraventions. A contravention of the equivalent section in the FMCA (section 412) gives rise to a pecuniary penalty only (section 449(4)) and we suggest that would be more appropriate. **Other points** • Sections 129L(1)(b) and 129S(1)(a)(i) both need to be qualified by "in a material respect". • The Bill requires the RBNZ to state reasons for a remedial notice (section 129Q) but does not expressly require it to consult the insurer before issuing one. The insurer should have a right to be heard before a remedial notice is issued, unless there is genuine urgency (similar to section 129T for warning disclosure orders, which requires an opportunity to be heard). The Bill should specify the matters the RBNZ must consider before issuing a remedial notice. • Section 129S(2) allows the RBNZ to require a licensed insurer to display a copy of a warning on its website. However, the section does not require the RBNZ to establish that a contravention has occurred. The RBNZ may require publication where it has only reasonable cause to suspect a contravention. ICNZ considers that a higher threshold should apply before publication can be required, for example reasonable grounds to believe that a contravention has occurred. The Bill should also specify a maximum period for which the warning must remain displayed on the insurer's website. Finally, there should be an express right of appeal on the merits against a warning disclosure order. • Section 129S(3)(c) should be deleted. The RBNZ is no longer the AML/CFT supervisor and insurers are not generally subject to AML/CFT legislation. • Section 129T – the three working day notice period is unreasonably short. This timeframe should be replaced with "in a reasonable time". This would allow the time period to adjust to the particular circumstances. There should also be an express right to seek urgent High Court review before the order takes effect.
47	New Part 3A inserted
	Section 137E – Offence to contravene undertaking Section 137E makes it a criminal offence to contravene an undertaking. This is contrary to comparable regimes e.g. section 47 of the Financial Markets Authority Act 2011, which requires the FMA to apply to the court for an order if it considers that an undertaking has been breached. If this provision is to be retained, then the RBNZ must be required to show *mens rea* i.e., intent or recklessness. **Section 137Y – How infringement notice may be served** ICNZ recommends that new section 137Y be amended to expand the circumstances in which infringement notices may be served electronically. **Section 137ZC – Director liability** The Bill provides that if a body corporate is convicted of an offence, every director is guilty if the act took place with their authority, permission, or consent, or if they knew or ought to have known and failed to take reasonable steps. This provision should include a clearer "due diligence" defence for directors who have reasonably relied on

	management reporting and governance systems. The defence in section 137ZD should also apply to section 137ZC.
62	Subpart 4 of Part 4 replaced
	From a drafting perspective, ICNZ is concerned that splitting the resolution provisions between new sections 170 to 199C and new Schedule 2 makes the regime harder to understand and apply. These are significant powers, and the Bill should enable insurers, policyholders and other affected parties to identify the relevant triggers, powers, safeguards and process without having to move between separate parts of the legislation. If the provisions remain split, the Bill should include clear cross-references and signposting to improve readability and reduce the risk of uncertainty.
70	Section 219 amended (Certain New Zealand persons and overseas companies prohibited from using certain words in name)
	Clause 70 amends section 219 to increase the fines that apply for contravening this section. ICNZ recommends that section 219 should also be amended to add "insurer" to the list of restricted words. Clause 70 should provide: ***70 Section 219 amended (Certain New Zealand persons and overseas companies prohibited from using certain words in name)*** *(1) After section 219(2)(a), insert:* *(aa) insurer:* *~~(1)~~ (2) In section 219(3)(a), replace "$50,000" with "$100,000".* *~~(2)~~ (3) In section 219(3)(b), replace "$200,000" with "$1,500,000".*
77	New Schedule 2 inserted
	ICNZ queries the reference to "minimum capital requirements" in clause 11(c)(i) of Schedule 2. We query whether these provisions should refer expressly to the applicable prudential margin and/or solvency margin requirements.