

**Reprint
as at 1 April 2014**



**Insurance (Prudential Supervision)
Regulations 2010**
(SR 2010/454)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 13th day of December 2010

Present:
His Excellency the Governor-General in Council

Pursuant to sections 237 and 238 of the Insurance (Prudential Supervision) Act 2010, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the advice of the Minister of Finance given in accordance with a recommendation of the Reserve Bank of New Zealand, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Reserve Bank of New Zealand.

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Regulations

1 Title

These regulations are the Insurance (Prudential Supervision) Regulations 2010.

2 Commencement

- (1) Regulations 7 and 8 come into force on 7 March 2012.
- (2) The rest of these regulations come into force on 1 February 2011.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Insurance (Prudential Supervision) Act 2010

generally accepted accounting practice—

- (a) has the same meaning as in section 8 of the Financial Reporting Act 2013 (unless paragraph (b) applies); or
- (b) means generally accepted accounting practice within the meaning of section 3 of the Financial Reporting Act 1993 if the insurer is required to prepare financial statements in accordance with that practice

maintain the solvency margin, in relation to a statutory fund, means that the life insurer complies with the condition of its licence imposed under section 21(2)(c) of the Act

qualified auditor means,—

- (a) if the insurer is incorporated or registered under an Act that provides for the appointment of an auditor and the insurer is not an overseas company, an auditor appointed in accordance with the provisions of that Act; or
- (b) if the insurer is an overseas company or is an insurer that is not incorporated or registered under an Act that provides for the appointment of an auditor, a qualified auditor within the meaning of section 35 of the Financial Reporting Act 2013; or
- (c) if the insurer is a public entity under the Public Audit Act 2001, the Auditor-General

relevant financial statements, in relation to an insurer, means financial statements for the insurer, or for a group of which the insurer is a member, that comply with—

- (a) generally accepted accounting practice; or
- (b) in the case of an overseas insurer, the financial reporting requirements of the insurer's home jurisdiction

specified person has the same meaning as in section 238(4) of the Act

Regulation 3 **exempt company**: revoked, on 1 April 2014, by regulation 4(1) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 3 **generally accepted accounting practice**: replaced, on 1 April 2014, by regulation 4(2) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 3 **maintain the solvency margin**: inserted, on 1 September 2012, by regulation 4 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

Regulation 3 **qualified auditor**: replaced, on 1 April 2014, by regulation 4(2) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 3 **relevant financial statements**: inserted, on 1 April 2014, by regulation 4(2) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 3 **reporting entity**: revoked, on 1 April 2014, by regulation 4(1) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 3 **statement of financial performance**: revoked, on 1 April 2014, by regulation 4(1) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

4 Status of examples

- (1) An example used in these regulations is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

Prescribed jurisdictions

5 Prescribed jurisdictions for purposes of certain provisions

- (1) The following are prescribed jurisdictions for the purposes of sections 19(4) and 38(3) of the Act:
 - (a) the Commonwealth of Australia:
 - (b) Bermuda:
 - (c) Delaware, United States of America:
 - (d) France:
 - (e) Germany:
 - (f) Illinois, United States of America:
 - (g) India:
 - (h) Indiana, United States of America:
 - (i) Japan:
 - (j) the Netherlands:
 - (k) the United Kingdom.
- (2) The Commonwealth of Australia is a prescribed jurisdiction for the purposes of section 119(3) of the Act.

Regulation 5: replaced, on 1 September 2012, by regulation 5 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

Fit and proper policy requirement

6 Fit and proper policies must require reassessments every 3 years

For the purposes of section 34(4)(a) of the Act, the fit and proper policy of an insurer must require fit and proper reassessments of each director or relevant officer of the insurer to be conducted at least once in every 3-year period to ensure that the person who holds the position remains a fit and proper person.

*Overseas policyholder preferences***7 Financial strength rating must refer to overseas policyholder preference**

- (1) For the purposes of section 61 of the Act, if an overseas policyholder preference may apply in respect of a licensed insurer that is an overseas insurer, the text or commentary of the financial strength rating of the insurer must contain a statement prepared by the approved rating agency that gave the rating to the effect that—
- (a) an overseas policyholder preference (as defined in section 6(1) of the Insurance (Prudential Supervision) Act 2010) may apply in respect of the insurer; and
 - (b) the preference has, or may have, the effect, directly or indirectly, of—
 - (i) giving a material preference to policyholders in a jurisdiction specified in the statement as compared to other policyholders; or
 - (ii) otherwise being materially disadvantageous to New Zealand policyholders as compared to policyholders in a jurisdiction specified in the statement.
- (2) The jurisdiction that is to be specified in the statement under subclause (1)(b) is the licensed insurer's home jurisdiction.
- (3) The statement is not required to contain the information referred to in subclause (1)(b)(i) or (ii) if that information is inapplicable.

8 Disclosure of overseas policyholder preference by overseas insurer

- (1) This regulation applies, for the purposes of section 72 of the Act, if an overseas policyholder preference may apply in respect of a licensed insurer that is an overseas insurer.
- (2) The licensed insurer must disclose the nature and the extent of the overseas policyholder preference in the manner specified in subclause (3) when the insurer discloses its financial strength rating under any of sections 64 and 67 to 69 of the Act.

- (3) The nature and the extent of the overseas policyholder preference must be disclosed by way of a clear and prominent statement that—
 - (a) is prepared by the licensed insurer and approved by the Bank; and
 - (b) appears with, or immediately after, any text that discloses the financial strength rating (but in a manner that still allows that rating to be disclosed clearly and prominently); and
 - (c) identifies the existence of the overseas policyholder preference and the insurer's home jurisdiction; and
 - (d) describes how the overseas policyholder preference may have the effect referred to in paragraph (b) of the definition of that term in section 6(1) of the Act (and, in particular, a description of the extent of any material disadvantage to New Zealand policyholders as compared to policyholders in the insurer's home jurisdiction).
- (4) The statement referred to in subclause (3) may be varied with the Bank's approval.
- (5) The Bank must not give its approval under subclause (3)(a) or (4) in respect of a statement prepared by a licensed insurer unless it is satisfied that—
 - (a) the requirements in subclause (3)(c) and (d) are satisfied; and
 - (b) the statement is not likely to deceive or mislead a reasonable person.

Exemptions for small insurers

9 Exemptions relating to licence requirements

- (1) For the purposes of section 238 of the Act, a specified person that has an annual gross premium income (as determined in the manner specified in subclause (2)) that is less than \$1.5 million is exempted from compliance with the following provisions of the Act:
 - (a) section 19(1)(d) (licence requirement relating to statutory funds):

- (b) section 19(1)(f) (licence requirement relating to minimum amount of capital).
- (2) The annual gross premium income of an insurer is,—
 - (a) in the case of subclause (1)(a), its gross premium income derived from life policies for the immediately preceding accounting period (before the deduction of any reinsurance premiums) as disclosed in the financial information that is prepared and provided to the Bank in accordance with regulation 10(a) to (c):
 - (b) in the case of subclause (1)(b), its gross premium income for the immediately preceding accounting period (before the deduction of any reinsurance premiums) as disclosed in the financial information that is prepared and provided to the Bank in accordance with regulation 10(a) to (c).
- (3) In this regulation and regulation 10, **immediately preceding accounting period** means the accounting period that immediately precedes the accounting period in which the licence will be issued to the insurer under Part 2 of the Act.
- (4) This regulation is subject to regulation 10.

Example

ABC Limited was carrying on insurance business in New Zealand immediately before the commencement of section 238 of the Act (on 8 September 2010). Accordingly, it is a specified person under section 238(4) (friendly societies may also be specified persons).

ABC Limited applies for a licence under Part 2 of the Act. The Bank is considering granting a licence during ABC Limited's 2011/2012 accounting period.

ABC Limited's gross premium income in its 2010/2011 accounting period is \$1 million.

ABC Limited has an exemption from the relevant licence requirements (subject to regulation 10).

Regulation 9(2): replaced, on 1 April 2014, by regulation 5(1) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 9 example: amended, on 1 April 2014, by regulation 5(2) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

10 Conditions of exemptions relating to licence requirements

The exemptions under regulation 9 are subject to the conditions that—

- (a) the financial information that discloses the annual gross premium income of the insurer under regulation 9(2) (for the immediately preceding accounting period) must—
 - (i) state that information to the best of the insurer's knowledge; and
 - (ii) be prepared so as to take into account—
 - (A) information contained in relevant financial statements for that period (if any); and
 - (B) the insurer's accounting records; and
 - (iii) give a true and fair view of the matters to which it relates; and
- (b) that financial information is audited, or otherwise reviewed, to the Bank's satisfaction by a qualified auditor; and
- (c) before the licence is issued under Part 2 of the Act, the insurer must provide to the Bank—
 - (i) a notice that the insurer intends to rely on either or both of the exemptions under regulation 9; and
 - (ii) a copy of the financial information referred to in paragraph (a) together with the qualified auditor's report on that information.

Regulation 10(a): replaced, on 1 April 2014, by regulation 6(1) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 10(b): replaced, on 1 April 2014, by regulation 6(1) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 10(c)(ii): replaced, on 1 April 2014, by regulation 6(2) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

11 Exemptions relating to ongoing requirements

- (1) For the purposes of section 238 of the Act, a specified person that has an annual gross premium income in relation to an accounting period (as determined in the manner specified in subclause (2)) that is less than \$1.5 million is exempted for that accounting period—
 - (a) from compliance with the following provisions of the Act:

-
- (i) section 60 (financial strength ratings):
 - (ii) section 81 (financial statements to be given to the Bank):
 - (iii) subpart 3 of Part 2 (statutory funds):
- (b) from being—
- (i) an FMC reporting entity for the purposes of the Financial Markets Conduct Act 2013 by virtue of section 451(h) of that Act; and
 - (ii) an issuer for the purposes of the Financial Reporting Act 1993 by virtue of section 4(1)(da) of that Act.
- (2) The annual gross premium income of an insurer in relation to an accounting period (the **relevant period**) is,—
- (a) in the case of subclause (1)(a)(iii), its gross premium income derived from life policies for the immediately preceding accounting period (before the deduction of any reinsurance premiums) as disclosed in the financial information that is prepared and provided to the Bank in accordance with regulation 12(a) to (c):
 - (b) in any other case, its gross premium income for the immediately preceding accounting period (before the deduction of any reinsurance premiums) as disclosed in the financial information that is prepared and provided to the Bank in accordance with regulation 12(a) to (c).
- (3) In this regulation and regulation 12, **immediately preceding accounting period** means, in relation to a relevant period, the accounting period that immediately precedes the relevant period.

Example

ABC Limited was carrying on insurance business in New Zealand immediately before the commencement of section 238 of the Act (on 8 September 2010). Accordingly, it is a specified person under section 238(4) (friendly societies may also be specified persons).

ABC Limited's gross premium income in its 2010/2011 accounting period is \$1 million.

ABC Limited has an exemption in respect of the 2011/2012 accounting period (subject to regulations 12 and 13).

Regulation 11(1)(b): replaced, on 1 April 2014, by regulation 7(1) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 11(2): replaced, on 1 April 2014, by regulation 7(2) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 11 example: amended, on 1 April 2014, by regulation 7(3) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

12 Conditions of ongoing exemptions

The exemptions under regulation 11 in respect of an accounting period (the **relevant period**) are subject to the conditions that—

- (a) the financial information that discloses the annual gross premium income of the insurer under regulation 11(2) (for the immediately preceding accounting period) must—
 - (i) state that information to the best of the insurer's knowledge; and
 - (ii) be prepared so as to take into account—
 - (A) information contained in relevant financial statements for that period (if any); and
 - (B) the insurer's accounting records; and
 - (iii) give a true and fair view of the matters to which it relates; and
- (b) that financial information is audited, or otherwise reviewed, to the Bank's satisfaction by a qualified auditor; and
- (c) the insurer must provide to the Bank a copy of that financial information, together with the qualified auditor's report on that information, within 4 months after the balance date of the insurer for the immediately preceding accounting period; and
- (d) within 20 working days of the start of the relevant period, the insurer must provide to the Bank a notice that the insurer intends to rely on 1 or more of the exemptions in regulation 11 in respect of the relevant period; and
- (e) the notice under paragraph (d) specifies, to the best of the insurer's knowledge,—
 - (i) in the case of regulation 11(1)(a)(iii), the insurer's gross premium income derived from

life policies for the immediately preceding accounting period (before the deduction of any reinsurance premiums):

- (ii) in any other case, the insurer's gross premium income for the immediately preceding accounting period (before the deduction of any reinsurance premiums).

Regulation 12(a): replaced, on 1 April 2014, by regulation 8 of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 12(b): replaced, on 1 April 2014, by regulation 8 of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 12(c): replaced, on 1 April 2014, by regulation 8 of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

13 Exemption ceases to apply after \$1.5 million limit is exceeded

- (1) An exemption under regulation 11 does not apply to an insurer in respect of an accounting period (the **relevant period**) if,—
 - (a) in the case of regulation 11(1)(a)(iii), the insurer's gross premium income derived from life policies (before the deduction of any reinsurance premiums) for any preceding period exceeded \$1.5 million;
 - (b) in any other case, the insurer's gross premium income (before the deduction of any reinsurance premiums) for any preceding period exceeded \$1.5 million.
- (1A) An insurer's gross premium income must be determined by taking into account—
 - (a) information contained in relevant financial statements for that period (if any); and
 - (b) the insurer's accounting records.
- (2) In this regulation, **preceding period** means, in relation to a relevant period, any accounting period that precedes the relevant period (whether immediately preceding it or not), being an accounting period that commences after the licence is issued under Part 2 of the Act.

Example

ABC Limited's gross premium income in its 2013/2014 accounting period has increased to \$1.6 million.

Example—*continued*

ABC Limited will not be entitled to an exemption in respect of the 2014/2015 accounting period or any subsequent accounting period (even if its gross premium income falls below \$1.5 million in a future accounting period).

Regulation 13(1)(a): amended, on 1 April 2014, by regulation 9(1) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 13(1)(b): amended, on 1 April 2014, by regulation 9(2) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Regulation 13(1A): inserted, on 1 April 2014, by regulation 9(3) of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

Class of contracts declared not to be life policies

Heading: added, on 1 October 2011, by regulation 4 of the Insurance (Prudential Supervision) Amendment Regulations 2011 (SR 2011/278).

14 Certain credit insurance contracts are not life policies

- (1) For the purposes of section 84(4) of the Act, specified credit insurance contracts are declared to be a class of contracts that are not life policies.
- (2) A contract is a **specified credit insurance contract** if—
 - (a) the contract is entered into in connection with 1 or more loans; and
 - (b) the contract provides for both life insurance and non-life insurance (within the meaning of section 85(6) of the Act but applied as if this regulation were not in force); and
 - (c) by the terms of the contract, all of the following apply:
 - (i) the duration of the contract in respect of the life insurance benefits is not more than 5 years; and
 - (ii) the sum insured in respect of the life insurance benefits must not exceed the lesser of—
 - (A) the unpaid balance under the loan (or if there is more than 1 loan, the aggregate unpaid balance of the loans); and
 - (B) \$200,000; and
 - (iii) if the sum insured in respect of the life insurance benefits is paid by regular payments, the maxi-

mum period for which those payments may be made must not exceed—

- (A) the remaining term of the loan; or
- (B) if there is more than 1 loan, the longest remaining term of those loans; and

(d) the insurer is a non-life insurer.

(3) In subclause (2),—

life insurance benefits means the benefits of the life insurance referred to in subclause (2)(b)

loan—

- (a) means a credit contract within the meaning of section 7 of the Credit Contracts and Consumer Finance Act 2003; but
- (b) does not include a credit contract entered into primarily for the purpose of providing finance to enable, or facilitate, the purchase of real property

non-life insurer means an insurer that, if both of the following are disregarded, is not liable under any life policy:

- (a) contracts that satisfy the requirements referred to in subclause (2)(a) to (c):
- (b) life policies that are part of a portfolio of life insurance policies that is closed to new business and is being run-off by the insurer

unpaid balance means the amount owing under a loan at a particular time, being the difference between all amounts credited and all amounts debited to the debtor under the loan at that time.

Regulation 14: replaced, on 1 September 2012, by regulation 6 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

Statutory funds: General matters

Heading: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

15 Notice to Bank when statutory fund established

- (1) A notice under section 88 of the Act of the establishment of a statutory fund must contain the following (in addition to the matters specified in section 88(1)(a) to (c) of the Act):

- (a) particulars of the types of life insurance business to be carried on by the life insurer within the fund:
 - (b) particulars of the proposed external financing arrangements for the writing of new life insurance business to which the fund relates:
 - (c) business projections of the life insurance business to which the fund relates for whichever is greater of the following periods:
 - (i) the period of the external financing arrangements for that business; and
 - (ii) 5 years:
 - (d) a statement by the appointed actuary of the validity of the assumptions and methodology relating to the business projections referred to in paragraph (c).
- (2) For the purposes of section 88(2) of the Act, the notice must be given in writing within 90 days after the establishment of the statutory fund.
- (3) In subclause (1), **external** means external to the statutory fund.
- Regulation 15: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

16 Transfer of assets on establishment

For the purposes of sections 89 and 92(a) of the Act, the value of assets that a life insurer must transfer to a statutory fund on its establishment is an amount that is sufficient to ensure that, immediately after the establishment of the fund, the life insurer will maintain the solvency margin in respect of the fund.

Regulation 16: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

17 Unsecured borrowing

- (1) For the purposes of section 94(4) of the Act, the amount to be ascertained in the prescribed manner must be calculated using the following formula:

$$50\% \times (a - b)$$

where—

- a is the amount of the total assets of the statutory fund

- b is the amount of assets of the statutory fund required to ensure that the insurer continues to maintain the solvency margin of the fund.
- (2) The calculation required by subclause (1) must be made on the basis that the unsecured borrowing has occurred.

Regulation 17: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

18 Investment of assets in associated persons of life insurer

For the purposes of section 99(4) of the Act, the percentage is 2.5%.

Regulation 18: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

19 Recording of restricted investments

- (1) For the purposes of section 100 of the Act, a record of a life insurer's restricted investments must contain the following information:
- (a) the name of the issuer of the investment;
 - (b) the nature of the investment (for example, shares, a debenture, or convertible notes);
 - (c) the amount of the investment;
 - (d) the amount referred to in paragraph (c) as a percentage of the value of all assets of the statutory fund.
- (2) The records referred to in subclause (1)(c) and (d) must, as soon as practicable after each balance date of the life insurer, be updated to state the amount and percentage as at the balance date.
- (3) The amount of the investment and the value of all assets of the statutory fund must be determined in accordance with generally accepted accounting practice.
- (4) In subclause (2), **balance date** has the same meaning as in section 41 of the Financial Reporting Act 2013.

Regulation 19: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

Regulation 19(4): amended, on 1 April 2014, by regulation 10 of the Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24).

20 Requirements for transfer of life policies between statutory funds by endorsement

- (1) For the purposes of section 111(2) of the Act, the part of the liabilities of the life insurer that is of equivalent value to the assets that must be transferred to each statutory fund must be ascertained by—
 - (a) identifying the life policy that has become referable to another statutory fund or a further statutory fund or further statutory funds;
 - (b) determining the amount of the policy liability in relation to the life policy;
 - (c) determining the amount of the other liabilities of the life insurer that—
 - (i) arose out of the conduct of the business of the statutory fund or funds that the life policy was referable to before the endorsement took effect; and
 - (ii) may fairly be attributed to the life policy;
 - (d) if the life policy is referable to more than 1 statutory fund as a result of the endorsement taking effect, determining the proportion of the liabilities under paragraphs (b) and (c) that are attributable to each of those funds based on the proportion of the premium that is to be credited to each fund.
- (2) If, as a result of the endorsement taking effect, the life policy is referable to—
 - (a) 1 statutory fund, the assets to be transferred to the fund must be of a value equivalent to the sum of the amounts determined under subclause (1)(b) and (c);
 - (b) more than 1 statutory fund, the assets to be transferred to each fund must be of a value equivalent to the amount determined under subclause (1)(d) in respect of the fund.
- (3) A life insurer must determine the amounts under subclause (1) after—
 - (a) obtaining the written advice of the appointed actuary on the matter; and
 - (b) having regard to that advice.

- (4) For the purposes of section 111(3) of the Act, the notice given to the policyholder in relation to an endorsement must—
- (a) be in writing; and
 - (b) be given within 20 working days after the endorsement takes effect; and
 - (c) identify the life policy that is subject to the endorsement; and
 - (d) identify the statutory funds that the life policy—
 - (i) was referable to before the endorsement took effect; and
 - (ii) is referable to as a result of the endorsement taking effect; and
 - (e) specify the date on which the endorsement took effect; and
 - (f) if the life policy has become referable to 2 or more statutory funds, specify—
 - (i) the benefits under the policy that are to be provided out of each fund; and
 - (ii) either the proportion of the premium that is related to the benefits to be provided out of each fund and is to be credited to the fund or the way in which that proportion is to be calculated; and
 - (g) contain, or be accompanied by, a document that briefly describes the reasons for the endorsement.
- (5) In this regulation, **endorsement** means an endorsement referred to in section 91(4) of the Act.

Regulation 20: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

*Statutory funds: Allocation of profits and losses
and capital payments*

Heading: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

**21 Interpretation relating to allocation of profits and losses
and capital payments**

- (1) In these regulations,—
- constitution**, in relation to a life insurer,—
- (a) means,—

- (i) in the case of a company within the meaning of the Companies Act 1993, the constitution of the company; and
 - (ii) in any other case, the documents or instruments constituting or defining the constitution of the insurer; and
- (b) includes any other document governing the activities or conduct of the life insurer

non-participating benefit means a benefit provided under a life policy other than a participating benefit

non-participating business means life insurance business that consists of the provision of non-participating benefits under life policies

participating benefit—

- (a) means a benefit that has both of the following features:
 - (i) the benefit is provided under a life policy;
 - (ii) the benefit includes an entitlement to share in a distribution by the life insurer of profits or a surplus derived from the assets of a statutory fund; and
- (b) includes a benefit provided under a life policy entered into before 1 September 2012 that is of a class of benefit identified by an actuary as involving participation in profits; but
- (c) does not include—
 - (i) an investment-linked benefit (within the meaning of section 98(3) of the Act); or
 - (ii) a benefit provided under a multiple life policy (within the meaning of section EY 30(14) of the Income Tax Act 2007); or
 - (iii) a benefit provided under a workplace group policy (within the meaning of section EY 30(15) of the Income Tax Act 2007); or
 - (iv) a benefit provided under a contract of reinsurance

participating business means life insurance business that consists of the provision of participating benefits under life policies

policyholders' retained profits has the meaning set out in regulation 29

shareholders' or members' capital has the meaning set out in regulation 30

shareholders' or members' retained profits (non-participating) has the meaning set out in regulation 31

shareholders' or members' retained profits (participating) has the meaning set out in regulation 32.

- (2) The categories of business of a statutory fund for the purposes of regulations 22 to 34 are participating business and non-participating business.
- (3) In the case of a body corporate that has members but not shareholders, the reference in regulation 27 or 28 to members' funds must be treated as a reference to an account of the life insurer that represents funds that are not assets of a statutory fund.

Regulation 21: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

22 Rules relating to allocation of operating profits and losses
Regulations 23 to 26 apply for the purposes of section 112 of the Act.

Regulation 22: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

23 Obligation to allocate operating profit or loss

If financial statements given to the Bank under section 81(1) of the Act disclose that a category of business of a statutory fund has an operating profit for the period to which the statements relate or has incurred an operating loss for the period, the life insurer must allocate the profit or loss, as the case may be.

Regulation 23: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

24 Operating profit or loss

- (1) A category of business of a statutory fund has an operating profit for a period if the income of the category for the period exceeds outgoings of the category for the period (and the amount of the operating profit is the amount by which income exceeds outgoings).
- (2) A category of business of a statutory fund incurs an operating loss for a period if the outgoings of the category for the

period exceed the income of the category for the period (and the amount of the operating loss is the amount by which outgoings exceed income).

Regulation 24: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

25 Allocation of operating profit or loss

- (1) A life insurer must allocate all of the operating profit or loss of a category of business of a statutory fund for a period.
- (2) A life insurer allocates an operating profit for a period by identifying in its financial statements prepared as at the end of the period—
 - (a) the amount of the profit; and
 - (b) the amount of the profit that should be treated as, or added to, policyholders' retained profits; and
 - (c) the amount of the profit that should be treated as, or added to, shareholders' or members' retained profits (participating); and
 - (d) the amount of the profit that should be treated as, or added to, shareholders' or members' retained profits (non-participating).
- (3) A life insurer allocates an operating loss for a period by identifying in its financial statements prepared as at the end of the period—
 - (a) the amount of the loss; and
 - (b) the amount representing the portion of the loss to be taken into account in the reduction of policyholders' retained profits; and
 - (c) the amount representing the portion of the loss to be taken into account in the reduction of shareholders' or members' retained profits (participating); and
 - (d) the amount representing the portion of the loss to be taken into account in the reduction of shareholders' or members' retained profits (non-participating).

Regulation 25: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

26 Basis of allocation of operating profit or loss

- (1) The allocation of an operating profit of a category of business of a statutory fund must be made in accordance with the following rules:
 - (a) in the case of a profit of a category representing participating business, at least 80%, or such higher percentage as is specified in the constitution of the insurer, of the profit must be treated as, or added to, policyholders' retained profits of the statutory fund:
 - (b) any part of a profit of a category representing participating business and not allocated under paragraph (a) must be treated as, or added to, shareholders' or members' retained profits (participating) of the statutory fund:
 - (c) a profit of a category representing non-participating business must be treated as, or added to, shareholders' or members' retained profits (non-participating) of the statutory fund.
- (2) The allocation of an operating loss of a category of business of a statutory fund must be made in accordance with the following rules:
 - (a) in the case of a loss of a category representing participating business, no more than 80%, or such higher percentage as is specified in the constitution of the insurer, may be taken into account in the reduction of policyholders' retained profits of the statutory fund:
 - (b) any part of a loss of a category representing participating business and not allocated under paragraph (a) must be allocated in the reduction of shareholders' or members' retained profits (participating) of the statutory fund:
 - (c) a loss of a category representing non-participating business must be allocated in the reduction of shareholders' or members' retained profits (non-participating) of the statutory fund.

Regulation 26: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

27 Distribution of retained profits

- (1) This regulation applies for the purposes of section 114 of the Act.
- (2) A distribution of retained profits of a statutory fund must be in accordance with the following rules:
 - (a) policyholders' retained profits may only be distributed to policyholders of life policies that provide for participating benefits:
 - (b) shareholders' or members' retained profits (participating) and shareholders' or members' retained profits (non-participating) may be—
 - (i) transferred to shareholders' or members' funds; or
 - (ii) transferred to another statutory fund of the life insurer; or
 - (iii) distributed to policyholders of life policies that provide for participating benefits.
- (3) A distribution of retained profits of a statutory fund may only be made after the directors of the life insurer have received the written advice of the appointed actuary as to the likely consequences of the proposed distribution.
- (4) A distribution of retained profits of a statutory fund must not be made if—
 - (a) the distribution would have the result that the insurer would fail to maintain the solvency margin in relation to the fund; or
 - (b) the distribution would involve a contravention of a direction given by the Bank under Part 4 of the Act.
- (5) A distribution of shareholders' or members' retained profits (participating) must not be made if—
 - (a) a distribution of policyholders' retained profits is not made at the same time; and
 - (b) immediately after the distribution, the shareholders' or members' retained profits (participating) of the statutory fund that remain undistributed are less than 25% (or such lower percentage as is specified in the life insurer's constitution) of the policyholders' retained profits of the statutory fund that remain undistributed.

Regulation 27: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

28 Distribution of shareholders' or members' capital

- (1) This regulation applies for the purposes of section 115 of the Act.
- (2) A distribution of shareholders' or members' capital in relation to a statutory fund—
 - (a) may only be made after the directors of the life insurer have received written advice from the appointed actuary as to the likely consequences of the proposed distribution; and
 - (b) must not be made if—
 - (i) the distribution would have the result that the insurer would fail to maintain the solvency margin in relation to the fund; or
 - (ii) the distribution would involve a contravention of a direction given by the Bank under Part 4 of the Act.
- (3) Shareholders' or members' capital may be distributed in the following ways:
 - (a) by transfer to shareholders' or members' funds;
 - (b) by transfer to another statutory fund of the life insurer;
 - (c) by distribution to policyholders of life policies that provide for participating benefits.

Regulation 28: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

29 Policyholders' retained profits

- (1) In these regulations, **policyholders' retained profits**, in relation to a statutory fund at a particular time, means the amount derived in accordance with the following formula:

$$(a + b) - (c + d)$$

where—

- a is the starting amount as defined in subclause (2)
- b is the total of the amounts allocated, before that time, under regulation 26(1)(a)

- c is the total of the amounts referred to in variables a and b distributed before that time
 - d is the total of the amounts allocated, before that time, under regulation 26(2)(a).
- (2) In this regulation, the **starting amount** is the sum of—
- (a) a part of the aggregate retained profits of the category of business of the statutory fund representing participating business—
 - (i) as determined by the life insurer; and
 - (ii) that is at least 80%, or a higher percentage that is specified in the life insurer's constitution, of those aggregate retained profits; and
 - (b) a part of the aggregate retained profits of the category of business of the statutory fund representing non-participating business as determined by the life insurer.

Regulation 29: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

30 Shareholders' or members' capital

- (1) In these regulations, **shareholders' or members' capital**, in relation to a statutory fund at a particular time, means the amount derived in accordance with the following formula:

$$(a + b) - c$$

where—

- a is the starting amount as defined in subclause (2)
 - b is the total amount of capital payments allocated, before that time, under section 113(2) of the Act
 - c is the total of the amounts referred to in variables a and b distributed before that time.
- (2) In this regulation, the **starting amount** is the sum of—
- (a) the aggregate shareholders' or members' capital of the statutory fund; and
 - (b) a part of the aggregate retained profits of the category of business of the statutory fund representing participating business—
 - (i) as determined by the life insurer; and
 - (ii) that is not allocated to the starting amount for policyholders' retained profits, shareholders'

- or members' retained profits (participating), or shareholders' or members' retained profits (non-participating) under these regulations; and
- (c) a part of the aggregate retained profits of the category of business of the statutory fund representing non-participating business as determined by the life insurer.

Regulation 30: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

31 Shareholders' or members' retained profits (non-participating)

- (1) In these regulations, **shareholders' or members' retained profits (non-participating)**, in relation to a statutory fund at a particular time, means the amount derived in accordance with the following formula:

$$(a + b) - (c + d)$$

where—

- a is the starting amount as defined in subclause (2)
- b is the total of the amounts allocated, before that time, under regulation 26(1)(c)
- c is the total of the amounts referred to in variables a and b distributed before that time
- d is the total of the amounts allocated, before that time, under regulation 26(2)(c).
- (2) In this regulation, the **starting amount** is the sum of—
- (a) a part of the aggregate retained profits of the category of business of the statutory fund representing participating business—
- (i) as determined by the life insurer; and
- (ii) that is not allocated to the starting amount for policyholders' retained profits or shareholders' or members' retained profits (participating) under these regulations; and
- (b) a part of the aggregate retained profits of the category of business of the statutory fund representing non-participating business as determined by the life insurer.

Regulation 31: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

32 Shareholders' or members' retained profits (participating)

- (1) In these regulations, **shareholders' or members' retained profits (participating)**, in relation to a statutory fund at a particular time, means the amount derived in accordance with the following formula:

$$(a + b) - (c + d)$$

where—

- a is the starting amount as defined in subclause (2)
 - b is the total of the amounts allocated, before that time, under regulation 26(1)(b)
 - c is the total of the amounts referred to in variables a and b distributed before that time
 - d is the total of the amounts allocated, before that time, under regulation 26(2)(b).
- (2) In this regulation, the **starting amount** is the sum of—
- (a) a part of the aggregate retained profits of the category of business of the statutory fund representing participating business that is not allocated to the starting amount for policyholders' retained profits under these regulations; and
 - (b) a part of the aggregate retained profits of the category of business of the statutory fund representing non-participating business as determined by the life insurer.

Regulation 32: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

33 Life insurer must have regard to appointed actuary's advice

A life insurer must, in determining an amount under any of regulations 29 to 32,—

- (a) obtain the written advice of the appointed actuary on the matter; and
- (b) have regard to that advice.

Regulation 33: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

34 Aggregate retained profits not to be allocated more than once

The sum of the amounts of aggregate retained profits of a category of business that are allocated to the starting amounts mentioned in regulations 29 to 33 must not exceed the total aggregate retained profits of the category.

Regulation 34: inserted, on 1 September 2012, by regulation 7 of the Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196).

Rebecca Kitteridge,
Clerk of the Executive Council.

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**Insurance (Prudential Supervision)
Regulations 2010**

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Reprints notes

1 *General*

This is a reprint of the Insurance (Prudential Supervision) Regulations 2010 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Insurance (Prudential Supervision) Amendment Regulations 2014 (LI 2014/24)
Insurance (Prudential Supervision) Amendment Regulations 2012 (SR 2012/196)
Insurance (Prudential Supervision) Amendment Regulations 2011 (SR 2011/278)
