

# **Insurance (Prudential Supervision) Amendment Bill**

Government Bill

As reported from the Finance and  
Expenditure Committee

## **Commentary**

### **Recommendation**

The Finance and Expenditure Committee has examined the Insurance (Prudential Supervision) Amendment Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The bill seeks to amend the Insurance (Prudential Supervision) Act 2010, which established a licensing and prudential supervision regime for insurers operating in New Zealand. It would also make a consequential amendment to the Reserve Bank of New Zealand Act 1989.

The amendments proposed in the bill are generally minor and technical in nature. They aim to improve the Act's effectiveness and ensure a smooth transition to full licensing of insurers in September 2013, by amending provisions that are unnecessary or impose unwarranted compliance costs, and by addressing technical issues.

We note that the Reserve Bank intends a policy review of the Act within five years after September 2013, to consider how well the regime is operating and whether further changes are desirable.

This commentary discusses the more significant amendments we recommend to the bill. It does not discuss minor or technical amendments.

### **Provision of interim financial information**

We recommend an amendment to clause 11(2), amending section 81(2) of the Act, to extend from 3 months to 4 months the period in which interim financial information must be prepared and given to the Reserve Bank. We consider the change appropriate as it would be aligned with the timeframe for annual financial reporting supported by the Commerce Committee in its report on the Financial Reporting Bill.

### **Provisional licences**

We recommend amendments to clause 16 to extend the circumstances in which a provisional licence would continue in force. The new circumstances would include situations where an application for a full licence had been declined, or where the insurer had been directed to cease entering into new insurance contracts. Under the Act, provisionally-licensed insurers would not qualify for a full licence if they were in distress management, so the Reserve Bank's regulatory oversight would cease when provisional licences expire in September 2013. We recognise that it may be desirable for the Reserve Bank to remain involved to oversee the orderly resolution of such a situation, so there are grounds for provisional licences to be extended beyond September 2013.

Changes we recommend to amend section 246(1A) and insert new section 246(1B) would provide for the provisional licence to remain in force in such circumstances, until the Reserve Bank was satisfied that it could be cancelled under section 246(2).

We also recommend the insertion of new subparagraph (v) in section 246(2)(c) to allow the Reserve Bank to cancel a provisional licence that had been extended beyond September 2013 if it considered it appropriate to do so. For example, if liquidation were the appropriate option, the licence might be unnecessary.

## **Appendix**

### **Committee process**

The Insurance (Prudential Supervision) Amendment Bill was referred to the committee on 8 May 2013. The closing date for submissions was 14 June 2013. We received and considered four submissions from interested groups, and heard from two submitters. We received advice from the Reserve Bank of New Zealand.

### **Committee membership**

Paul Goldsmith (Chairperson)

Maggie Barry

David Bennett

Hon Clayton Cosgrove

Hon David Cunliffe

John Hayes

Dr Russel Norman

Hon David Parker

Rt Hon Winston Peters

Jami-Lee Ross

Hon Kate Wilkinson

Julie Anne Genter replaced Dr Russel Norman for this item of business.

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**Insurance (Prudential Supervision)  
Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Bill English*

## **Insurance (Prudential Supervision) Amendment Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Insurance (Prudential Supervision) Amendment Act **2012**.
- 2 Commencement** 5  
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act** 10  
This Act amends the Insurance (Prudential Supervision) Act 2010 (the **principal Act**).

- Part 1  
Amendments to principal Act Insurance  
(Prudential Supervision) Act 2010**
- 3 Principal Act** 15  
This **Part** amends the Insurance (Prudential Supervision) Act 2010 (the **principal Act**).

**4 Section 21 amended (Conditions of licence)**

Replace section 21(2)(f) with:

- “(f) a condition that requires the licensed insurer or the directors of the insurer (or both) to certify that 1 or more of the following have been complied with (being certification that is given at the time or times and in the manner specified in the condition):
- “(i) any conditions of the licence:
  - “(ii) any requirements of this Act or the regulations:
  - “(iii) any requirements of any other enactment imposed on the insurer as a licensed insurer (for example, financial reporting obligations):”.

**5 Section 25 amended (Bank must notify applicant of decision and give notice on its Internet site)**

- (1) In the heading to section 25, replace “its Internet site” with “register”.
- (2) Replace section 25(3) with:
- “(3) The Bank must give notice of the issue of a licence on the register kept under **section 54A**.”

**6 Section 30 amended (Cancellation of licence)**

In section 30(2), replace “subsection (1)(a)(i) to (vi)” with “subsection (1)(a)(ii) to (vi)”.

**7 New section 54A and cross-heading inserted**

After section 54, insert:

*“Register”* 25

**“54A Register**

- “(1) The Bank must keep a public register of licensed insurers.
- “(2) The Bank must determine the form of the register and may amend the form as it considers necessary.
- “(3) The register ~~may~~ must include— 30
- “(a) the name of each licensed insurer; and
  - “(b) the current financial strength rating of each licensed insurer (unless the insurer is not required to have such a rating); and
  - “(c) any other prescribed information. 35

- “(4) The Bank must take all reasonable steps to ensure that the information contained in the public register is available to members of the public at all reasonable times.  
“Compare: 1989 No 157 s 69”.
- 8 Section 58 repealed (Incorporation by reference)** 5  
Repeal section 58.
- 9 Section 60 amended (Licensed insurer must have current financial strength rating)**
- (1) Replace section 60(2)(c) with: 10  
“(c) a captive insurer; or  
“(d) an insurer that is exempted under **subsection (2A)**.”
- (2) After section 60(2), insert:  
“(2A) The Bank may, by notice to a licensed insurer, exempt the insurer from compliance with subsection (1) if the Bank is satisfied that the insurer has ceased to enter into new contracts of insurance as an insurer. 15  
“(2B) **Subsection (2A)** is subject to section 232 (which provides for general provisions relating to exemptions).”
- 10 Section 64 amended (Disclosure of current rating to policyholder)** 20  
After section 64(4), insert:  
“(4A) If a contract of insurance is renewed, the licensed insurer is not required to comply with subsection (1) if—  
“(a) the contract is of a kind that is renewable more frequently than annually; and 25  
“(b) the information referred to in that subsection was disclosed in writing to the policyholder less than 12 months before the date of the renewal; and  
“(c) that information has not changed since the last disclosure was made to the policyholder under this section.” 30
- 11 Section 81 amended (Financial statements must be given to Bank)**
- (1) In the heading to section 81, after “**statements**”, insert “**and interim financial information**”.

- (2) Replace section 81(2) to (4) with:
- “(2) A licensed insurer must, within ~~3~~4 months after the end of the first half of each accounting period of the insurer,—
- “(a) prepare interim financial information for that half-period that complies with **subsection (3)**; and 5
- “(b) ensure that copies of that information together with a copy of the auditor’s report on the information (if any) are given—
- “(i) to the Bank; and
- “(ii) for registration to the Registrar if this is required 10  
by the regulations.
- “(3) The interim financial information must—
- “(a) comply with—
- “(i) generally accepted accounting practice; or
- “(ii) requirements specified by the Bank in a written 15  
notice given to the insurer (for example, regulatory requirements that apply in the insurer’s home jurisdiction); and
- “(b) be audited if required by the regulations.
- “(4) If **subsection (3)(a)(i)** applies, the interim financial information 20  
must be interim financial statements prepared in respect of—
- “(a) the insurer if the insurer, at the end of the half-period, has no subsidiaries; or
- “(b) a group comprising the insurer and its subsidiaries in 25  
any other case.
- “(4A) In this section, **generally accepted accounting practice**, **Registrar**, and **subsidiaries** have the same meanings as in the Financial Reporting Act 1993.”
- 12 New section 217A inserted (Time for filing charging document) 30**
- After section 217, insert:
- “**217A Time for filing charging document**
- Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence 35  
under this Act ends on the date that is 5 years after the date on which the offence was committed.”

**13 Section 232 amended (General provisions relating to declarations and exemptions)**

After section 232(2)(b), insert:

“(ba) **section 60(2A)** (which relates to exemptions for insurers in run-off from the requirement to have a current financial strength rating):”.

**14 Section 237 amended (Regulations)**

(1) In section 237(1)(j), replace “statements” with “information”.

(2) In section 237(1)(v), replace “section 226” with “**section 54A** or 226”.

**15 New section 238A and cross-heading inserted**

After section 238, insert:

*“Incorporation by reference*

**“238A Incorporation by reference**

“(1) This section applies to the following instruments: 15

“(a) a declaration under section 9:

“(b) a fit and proper standard:

“(c) a solvency standard:

“(d) regulations.

“(2) The following written material may be incorporated by reference in an instrument referred to in **subsection (1)**: 20

“(a) standards, requirements, or recommended practices of international or national organisations:

“(b) standards, requirements, or recommended practices prescribed in any country or jurisdiction: 25

“(c) any other written material that deals with technical matters and is too large or impractical to include in, or print as part of, the instrument.

“(3) Schedule 1 applies to any material incorporated by reference in an instrument referred to in **subsection (1)**.” 30

**16 Section 246 amended (Duration of provisional licence)**

(1) After section 246(1), insert:

“(1A) ~~Despite subsection (1), if, immediately before the date that is 3 years after the date on which this Act receives the Royal assent, an entity that still holds a provisional licence is subject~~ 35

to an insolvency proceeding or process, the provisional licence remains in force until it is cancelled under subsection (2).

“(1A) **Subsection (1B)** applies to an entity if—

“(a) the entity still holds a provisional licence immediately before the date (the **3-year date**) that is 3 years after the date on which this Act receives the Royal assent; and 5

“(b) 1 or more of the following apply to the entity:

“(i) the entity is, immediately before the 3-year date, subject to an insolvency proceeding or process:

“(ii) an application for a licence for the entity under section 17 was refused or declined at any time before the 3-year date: 10

“(iii) a direction under section 143 has, at any time before the 3-year date, been given to the entity requiring the entity to cease entering into any new contracts of insurance. 15

“(1B) Despite subsection (1), if this subsection applies to an entity, the provisional licence of the entity remains in force until it is cancelled under subsection (2).”

(2) Replace section 246(2)(b) with: 20

“(b) the Bank is satisfied that the holder has ceased to carry on insurance business in New Zealand; or

“(c) in the case of **subsection (1A) (1B)**, the Bank is satisfied that—

“(i) the holder is no longer subject to an insolvency proceeding or process; or 25

“(ii) the holder is a company that has been removed from the New Zealand register (within the meaning of the Companies Act 1993); or

“(iii) the holder is an overseas company that has been removed from the overseas register (within the meaning of the Companies Act 1993); or 30

“(iv) the holder has been liquidated, wound up, or dissolved or has otherwise ceased to exist; or

“(v) for any other reason, it is no longer appropriate for the provisional licence to remain in force.” 35

(3) After section 246(2), insert:

“(3) **Subsection (2)(c)** does not limit subsection (2)(a) or (b).

- “(4) In this section, an entity is subject to an **insolvency proceeding or process** if any of the following apply:
- “(a) the entity is in liquidation under the Companies Act 1993 or under any other Act:
  - “(b) the entity is in voluntary administration or subject to a deed of company arrangement: 5
  - “(c) a receiver has been appointed and is acting in relation to the whole, or substantially the whole, of the assets and the undertaking of the entity:
  - “(d) the entity is subject to a compromise with its creditors that has been approved under Part 14 of the Companies Act 1993: 10
  - “(e) an order that an arrangement or a compromise is binding on the entity has been made under Part 15 of the Companies Act 1993: 15
  - “(f) the entity is in statutory management under this Act, the Corporations (Investigation and Management) Act 1989, or any other enactment:
  - “(g) in the case of an overseas person, the overseas person is subject to a proceeding or process in its home jurisdiction that is similar to any of those set out in **paragraphs (a) to (f)**.” 20

#### 17 Schedule 1 amended

- (1) In the Schedule 1 heading, replace “s 58” with “**s 238A**”.
- (2) In Schedule 1, heading to clause 1, delete “**into solvency standards**”. 25
- (3) In Schedule 1, clauses 1(1) and (2)(b), 2(1) and (2), 3(1)(a), (2), and (3), 4, 5, 6(1) and (3), and 7, ~~and 8(1) and (2)~~; replace “solvency standard” with “specified instrument” in each place.
- (4) In Schedule 1, clause 1(2)(a), replace “solvency standard is issued” with “specified instrument is issued or made”. 30
- (5) In Schedule 1, after clause 1(2), insert:
  - “(3) In this schedule, **specified instrument** means an instrument to which **section 238A** applies.”
- (6) In Schedule 1, clauses 3(2), 4, and 5, replace “the standard” with “the instrument” in each place. 35

**Part 2**  
**Amendments to Reserve Bank of New  
Zealand Act 1989**

- 18 Principal Act**  
**Sections 19 and 20** amend the Reserve Bank of New Zealand Act 1989 (the **principal Act**). 5
- 19 Section 69 amended (Register)**  
After section 69(2), insert:  
“(2A) The register ~~may~~ must include— 10  
“(a) the name of each registered bank; and  
“(b) the current rating of each registered bank under section 80 (if any); and  
“(c) any other prescribed information.”
- 20 Section 173 amended (Regulations)**  
After section 173(f), insert: 15  
“(fa) prescribing information for the purposes of **section 69(2A)(c)**.”

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**Legislative history**

6 November 2012	Introduction (Bill 80–1)
8 May 2013	First reading and referral to Finance and Expenditure Committee

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