DRAFT FOR CONSULTATION

Insurance (Prudential Supervision) Bill

Government Bill

Explanatory note

General policy statement

To come.

Clause by clause analysis

To come.

Regulatory impact statement

To come.

Insurance (Prudential Supervision) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Insurance (Prudential Supervision) Act 2009.

2 Commencement

(1) Section 1, this section, and sections 64, 99, and 217 (which relate to regulations) come into force on the day after the date on which this Act receives the Royal assent.

(2) The rest of this Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.

Part 1
Preliminary provisions

Purposes and principles

3 Purposes

(1) The purposes of this Act are to—
- (a) promote the maintenance of a sound and efficient insurance sector; and
- (b) promote public confidence in the insurance sector.

(2) Those purposes are achieved by—
- (a) establishing a system for licensing insurers; and
- (b) imposing prudential requirements on insurers; and

(c) providing for the supervision by the Reserve Bank of New Zealand (the **Bank**) of compliance with those requirements; and

(d) conferring certain powers on the Bank to act in respect of insurers in financial distress or other difficulties.

4 Principles to be taken into account under this Act

In achieving the purposes of this Act, the Bank must take into account the following principles that are relevant to the performance of functions or duties imposed, or the exercise of powers conferred, on the Bank by this Act:

(a) the importance of insurance to members of the public in terms of their personal or business risk management:

(b) the importance of maintaining the sustainability of the New Zealand insurance market:

(c) the importance of dealing with an insurer in financial distress or other difficulties in a manner that aims to—

(i) adequately protect the interests of its policyholders and the public interest; and

(ii) ensure that any failure, or possible failure, of the insurer does not have the potential to significantly damage the financial system or the economy of New Zealand:

(d) the importance of recognising—

(i) that it is not a purpose of this Act to eliminate all risk of insurer failure; and

(ii) that members of the public are responsible for their own decisions relating to insurance:

(e) the desirability of providing to the public adequate information to enable members of the public to make those decisions:

(f) the desirability of consistency in the treatment of similar institutions:

(g) the need to maintain competition within the insurance sector:

(h) the need to avoid unnecessary compliance costs:

(i) the desirability of sound governance of insurers:

(j) the desirability of effective risk management by insurers.

Overview

5 Overview

(1) In this Act,—

(a) this Part deals with preliminary matters, including purposes, principles, interpretation, the Bank's functions under this Act, and the application of this Act to the Crown:

(b) Part 2 contains provisions relating to the licensing and prudential regulation of insurers:

(c) Part 3 contains provisions relating to the prudential supervision of insurers:

(d) Part 4 contains provisions relating to distress management, including provisions relating to recovery plans, directions, liquidation or voluntary administration of insurers, and statutory management:

(e) Part 5 contains miscellaneous provisions, including provisions relating to offences, banning orders, regulations, consequential amendments, and transitional arrangements.

(2) This section is only a guide to the general scheme and effect of this Act.

Interpretation

6 Interpretation

(1) In this Act, unless the context otherwise requires,—

administrator means an administrator under Part 15A of the Companies Act 1993

applicant means a body corporate that has applied for a licence

approved rating agency means a rating agency approved by the Bank under section 63

associated person has the meaning set out in section 9(2)

Bank means the Reserve Bank of New Zealand constituted under the Reserve Bank of New Zealand Act 1989

Bank's Internet site means an Internet site maintained by, or on behalf of, the Bank

captive insurer means an insurer that—

(a) is a subsidiary of an entity that is not an insurer (the **parent**); and

(b) only insures risks of the parent

carries on insurance business in New Zealand has the meaning set out in section 8

condition, in relation to a licensed insurer, means any condition of its licence

continuous disability insurance has the meaning set out in subsection (2)

court means, in relation to any matter, the court by or before which the matter falls to be determined

credit watch warning means any word, expression, or symbol used by an agency to indicate that the agency has an insurer under consideration with a view to a possible downgrading in a credit rating given to the insurer by the agency

current credit rating means a credit rating that, in relation to a date on which an insurer is required to have a rating, was given not earlier than a year before that date

deed administrator has the same meaning as in section 239B of the Companies Act 1993

deed of company arrangement has the same meaning as in section 239B of the Companies Act 1993

direction means any direction given by the Bank under this Act or the regulations

director means—

(a) a person occupying the position of director by whatever name called:

(b) in the case of an entity that does not have directors as such, any trustee, manager, or other person who acts in relation to that entity in the same or a similar fashion as a director would act were that entity a company incorporated in New Zealand under the Companies Act 1993

document means—

(a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds or from which symbols, images, or sounds can be derived, and includes—

(i) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached:
(ii) a book, map, plan, graph, or drawing:
(iii) a photograph, film, or negative; and

(b) information electronically recorded or stored, and information derived from that information

failing to maintain a solvency margin has the meaning set out in section 57

financial statements has the same meaning as in section 8 of the Financial Reporting Act 1993

governing body means,—

(a) in relation to a body corporate, the board of directors (or other persons or body exercising powers of management, however described) of the body corporate:

(b) in relation to a partnership or other unincorporated body of persons, either—
(i) the board of directors (or other persons or body exercising powers of management, however described) of the partnership or unincorporated body of persons; or
(ii) if there is no board or other persons or body as described in subparagraph (i), the partners of the partnership or members of the unincorporated body of persons

Governor means the Governor of the Bank appointed under the Reserve Bank of New Zealand Act 1989

group financial statements has the same meaning as in section 9 of the Financial Reporting Act 1993

health insurance means insurance against loss arising out of a liability to pay fees or charges relating to the provision of a health service (within the meaning of section 5(1) of the Health Practitioners Competence Assurance Act 2003)

holding entity has the meaning set out in section 9(3)

home jurisdiction means, in relation to an overseas person that is a body corporate, the jurisdiction in which that body is incorporated

insurer means a person by whom or on whose behalf the risk or part of the risk to which a contract of insurance relates is accepted

insurer's actuary, in relation to an insurer, means the actuary appointed under section 74 in respect of the insurer

investigator means a person appointed under section 130(2)(b)

licence means a licence issued under Part 2

licensed insurer means a person who holds a licence

life insurance means any of the following:

(a) insurance that provides for the payment of money on the death of a person or on the happening of a contingency dependent on the termination or continuance of human life:

(b) insurance that is subject to payment of premiums for a term dependent on the termination or continuance of human life:

(c) insurance that provides for the payment of an annuity for a term dependent on the continuance of human life:

(d) continuous disability insurance

life insurer means an insurer that issues, or is liable under, life policies

life policy means a contract of life insurance

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

New Zealand chief executive officer, in relation to an overseas insurer, means—

(a) the most senior officer of that insurer who is ordinarily resident in New Zealand; or

(b) another person who may be nominated by that insurer and is agreed to in writing by the Bank

New Zealand policyholder means a policyholder—

(a) who is ordinarily resident in New Zealand; or

(b) that is incorporated or formed in New Zealand

operating fraudulently or recklessly has the meaning set out in subsection (4)

ordinarily resident in New Zealand has the meaning set out in subsection (5)

overseas insurer means an insurer that is an overseas person

overseas person means—

(a) a body corporate incorporated outside New Zealand; or

(b) an unincorporated body that has its head office or principal place of business outside New Zealand

overseas policyholder preference means, in relation to an overseas insurer, a law or regulatory requirement of the overseas insurer's home jurisdiction that—

(a) relates to the recognition and priorities of claims of creditors or classes of creditors in the event of the insurer's insolvency; and

(b) has the effect, directly or indirectly, of—

(i) giving a material preference to policyholders in the insurer's home jurisdiction as compared to other policyholders; or

(ii) otherwise being materially disadvantageous to New Zealand policyholders as compared to policyholders in the insurer's home jurisdiction

overseas supervisor means any authority or body in any country other than New Zealand that exercises functions in relation to insurers that correspond with, or are similar to, those conferred on the Bank under this Act

policyholder means a person who is indemnified or deemed to be indemnified by a contract of insurance; and includes any person claiming by, through, or under any policyholder

reinsurance means insurance under which an insurer indemnifies another insurer (the **cedant**) against losses on 1 or more contracts of insurance entered into by the cedant

related party, in relation to an insurer, means—

(a) the associated persons of the insurer; and

(b) the directors of the insurer; and

(c) the relevant officers of the insurer and any other person occupying a position that allows the person to exercise significant influence over the management or administration of the insurer; and

(d) the relatives of persons referred to in paragraphs (a) to (c); and

(e) in the case of an insurer that is a company, any person who—

(i) owns, or in any way has the power to control (whether directly or indirectly), or has the right to acquire, 10% or more of the ordinary shares of the company; or

(ii) owns, or in any way has the power to control (whether directly or indirectly), or has the right to acquire, 10% or more of the voting rights of the company; or

(iii) has, by any other means, 10% or more of the control of the company; and

(f) in the case of an insurer that is an entity other than a company, any person who—

(i) is in a position to control (whether directly or indirectly) 10% or more of the voting rights in relation to that entity; or

(ii) has, by any other means, 10% or more of the control of that entity; and

(g) any person who has control (whether directly or indirectly) or significant influence over 25% or more of the composition of the governing body of the insurer; and

(h) any person or class of persons declared by regulations to be a related party for the purposes of this Act

relative, in relation to any person, means—

(a) that person's spouse, civil union partner, or de facto partner; and

(b) any parent (including step-parent), brother, sister, or child (including stepchild) of that person; and

(c) any parent (including step-parent), brother, sister, or child (including stepchild) of that person's spouse, civil union partner, or de facto partner

relevant officer, in relation to an insurer, means a person who occupies any of the following positions in respect of the insurer (by whatever name called):

(a) in the case of an overseas insurer,—

(i) New Zealand chief executive officer:

(ii) insurer's actuary in respect of its New Zealand business:

(b) in any other case,—

(i) chief executive officer:

(ii) chief financial officer:

(iii) insurer's actuary

regulations means regulations in force under this Act

serious wrongdoing means an act, omission, or course of conduct that—

(a) is misleading or deceptive; or

(b) involves the unlawful or corrupt use of the funds or resources of an entity; or

(c) constitutes an offence that is punishable by imprisonment for a term of 2 years or more; or

(d) is oppressive, improperly discriminatory, or negligent, or constitutes mismanagement; or

(e) otherwise reflects adversely on a person's competence, diligence, judgement, honesty, or integrity

solvency margin has the meaning set out in section 53

solvency standard means a standard approved under section 50

subsidiary means a subsidiary within the meaning of sections 5 to 8 of the Companies Act 1993

voluntary administration means voluntary administration under Part 15A of the Companies Act 1993

voting right has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

voting security has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989.

(2) For the purposes of this Act, **continuous disability insurance**—

(a) means insurance under which a benefit is payable in the event of—

(i) injury to, or disability of, a person as a result of accident or sickness (being a benefit that is payable in regular payments over a period that is 2 years or more); or

(ii) a person being found to have a stated condition or disease; but

(b) does not include any of the following:

(i) insurance under a contract that permits alteration, at the instance of the insurer, of the benefits provided for by the contract or the premiums payable under the contract (subject to subsection (3)):

(ii) health insurance:

(iii) insurance that is declared by regulations not to be continuous disability insurance.

(3) For the purposes of subsection (2)(b)(i), insurance under a contract that permits alteration, by the insurer, of the—

(a) benefits provided for by the contract is not excluded from being continuous disability insurance if, under the contract, the only alterations that are permitted to be made are alterations that improve the benefits and that are made following an offer made by the insurer and accepted by the policyholder:

(b) premiums payable under the contract is not excluded from being continuous disability insurance if the terms of all contracts of the same kind as the contract only permit the alterations if they are made on a simultaneous and consistent basis.

(4) For the purposes of this Act, a licensed insurer is **operating fraudulently or recklessly** if—

(a) it contracts liabilities that the directors did not, at the time the liabilities were contracted, honestly believe on reasonable grounds the insurer would be able to pay when they fell due for payment as well as all its other liabilities (including contingent liabilities); or

(b) it carries on any business or operates in a reckless manner; or

(c) it carries on any business or operates with intent to defraud its policyholders, creditors, shareholders, or members or the policyholders, creditors, shareholders, or members of any other person, or for any other fraudulent purpose.

(5) For the purposes of this Act, a person is **ordinarily resident in New Zealand** if that person—

(a) is domiciled in New Zealand; or

(b) is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New Zealand, whether or not that person has on occasions been away from New Zealand during that period.

(6) For the purposes of this Act, a reference to information or data that is false or misleading includes a reference to information or data that is false or misleading by reason of—

(a) the form or context in which it is published or supplied; or

(b) the omission of any other information that is material in the form and context in which it is published or supplied.

7 Application of Act to friendly societies and credit unions

This Act applies to a friendly society or a credit union (as those terms are defined in the Friendly Societies and Credit Unions Act 1982) as if the friendly society or credit union were a body corporate.

8 Meaning of carrying on insurance business in New Zealand

(1) For the purposes of this Act, a person carries on insurance business in New Zealand if the person—

(a) is—

(i) a body corporate or an association of persons incorporated or formed in New Zealand; or

(ii) an overseas company that is required to be registered or deemed to be registered under the Companies Act 1993; or

(iii) ordinarily resident in New Zealand; and

(b) acts, or has at any material time acted, as an insurer in New Zealand or elsewhere; and

(c) is liable as an insurer under a contract of insurance to a policyholder in New Zealand.

(2) However, a person does not carry on insurance business in New Zealand for the purposes of this Act if the person is—

(a) a Crown entity within the meaning of section 7(1) of the Crown Entities Act 2004 (for example, the Accident Compensation Corporation, the Earthquake Commission, or the Housing New Zealand Corporation); or

(b) an entity named in Part 1 of Schedule 1 of the Ombudsmen Act 1975; or

(c) a public entity (within the meaning of section 5(1) of the Public Audit Act 2001) that is declared by regulations to be an entity to which this paragraph applies.

9 Meaning of associated person and holding entity

(1) For the purposes of this Act, a person (**A**) is associated with another person (**B**) if—

(a) B is A's holding entity or subsidiary; or

(b) more than half of the voting securities of A, other than voting securities that carry no right to participate beyond a specified amount in a distribution of either profits or capital, are held by B and persons that are associated with B (whether directly or indirectly, but other than in a fiduciary capacity); or

(c) more than half of the voting securities of each of them, other than voting securities that carry no right to participate beyond a specified amount in a distribution of either profits or capital, are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

(d) the businesses of A and B have been so carried on that the separate business of each person, or a substantial part of it, is not readily identifiable; or

(e) there is another person with which both persons are associated.

(2) **Associated person** has a corresponding meaning.

(3) For the purposes of this Act, a person is another person's **holding entity** if, and only if, that other person is its subsidiary.

Bank's functions

10 Bank's functions under Act

The functions of the Bank under this Act are to—

(a) issue licences under Part 2; and
(b) undertake prudential supervision of licensed insurers; and
(c) take appropriate action in respect of licensed insurers that have failed, are failing, or are likely to fail to comply with this Act or the regulations or are otherwise in financial or other difficulties; and
(d) carry out other functions, duties, and powers conferred on it by this Act and the regulations.

11 Bank must have regard to directions about government policy objectives

(1) The Minister may direct the Bank to have regard to a government policy that relates to the Bank's functions under this Act.

(2) The Bank must have regard to every direction given by the Minister under this section.

(3) The Minister must consult with the Bank before giving a direction.

(4) A direction must—
(a) be set out in a written statement signed by the Minister; and
(b) as soon as practicable after it is given, be—
(i) presented to the House of Representatives by the Minister; and
(ii) published in the *Gazette*.

(5) The Minister may not give a direction that requires the performance or non-performance of a particular act by the Bank, or any employee or officer of the Bank, or the bringing about of a particular result, in respect of a particular person.

(6) A direction may be amended, revoked, or replaced in the same way as it may be given.

Act binds the Crown

12 Act binds the Crown

This Act binds the Crown.

Part 2
Licensing and prudential regulation of insurers

Subpart 1—Licensing of insurers

Requirement to be licensed

13 Persons that carry on insurance business in New Zealand must be licensed

(1) Every person who carries on insurance business in New Zealand must hold a licence.

(2) A person who carries on insurance business in New Zealand without holding a licence commits an offence and is liable on summary conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $1,000,000.

14 Offence for person who is not licensed insurer to hold itself out to be licensed insurer

(1) A person commits an offence if the person—

(a) is not a licensed insurer; and

(b) uses any name, title, trade mark, style, designation, or description that represents or implies that the person is a licensed insurer.

(2) Every person who commits an offence under this section is liable on summary conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $1,000,000.

Process for obtaining licence

15 Application for licence as insurer

(1) Any body corporate may apply to the Bank to be licensed as a licensed insurer.

(2) Applications must be—
- (a) made in the manner that is specified by the Bank; and
- (b) accompanied by payment of the prescribed fee for the application (if any).

(3) Every applicant must provide to the Bank the information that is required by the Bank to assist it in determining the application.

(4) An applicant commits an offence if it provides false or misleading information to the Bank for the purposes of an application and is liable, on summary conviction, to a fine not exceeding $1,000,000.

16 Applicant must prepare fit and proper policy and give fit and proper notice

An applicant must—
- (a) prepare a fit and proper policy that complies with section 30 and provide a copy of it to the Bank with its application; and
- (b) provide to the Bank with its application a notice that—
  - (i) states that, in the opinion of all directors of the applicant after due enquiry by them, all of the directors and relevant officers of the applicant are, in accordance with the policy, fit and proper persons to hold their respective positions; and
  - (ii) is signed on behalf of all the directors of the applicant by at least 2 directors of the applicant (or, if the applicant has only 1 director, by that director); and
  - (iii) contains, or is accompanied by, a certificate from each director or relevant officer that is signed by the director or relevant officer and states that, in his or her opinion, he or she is, in accordance with the policy, a fit and proper person to hold the relevant position.

17 Applicant must prepare risk management programme

An applicant must prepare a risk management programme that complies with section 71 and provide a copy of it to the Bank with its application.

18 Entitlement to licence

(1) An applicant is entitled to be issued with a licence if the Bank is satisfied that—

(a) the applicant holds a current credit rating that complies with section 62 (unless a rating would not be required immediately after the issue of a licence as a result of section 62(2)); and

(b) the applicant has the ability to carry on its business or proposed business in a prudent manner; and

(c) the applicant has the ability to comply with subpart 2 and the regulations; and

(d) in the case of an applicant who carries on, or proposes to carry on, business as a life insurer, the applicant has the ability to comply with subpart 3 and the regulations; and

(e) the applicant has the ability to comply with the proposed conditions of licence (if any); and

(f) the applicant has complied with section 16 (which requires the applicant to prepare a fit and proper policy and to give a fit and proper notice); and

(g) the applicant has complied with section 17 (which requires the applicant to prepare a risk management programme); and

(h) the applicant's incorporation and ownership structure, governance structure, and financial strength are appropriate, having regard to the size and nature of the applicant's business or proposed business, including—

(i) the size and type of insurance business that is, or is proposed to be, carried out; and

(ii) the size and type of risks that are, or are proposed to be, insured; and

(i) in the case of an applicant that is an overseas person,—

(i) the law and regulatory requirements of the applicant's home jurisdiction that apply to the applicant and relate to the matters specified in subsection (3) are appropriate, having regard to whether that law and those requirements are, in terms of achieving the purposes of this Act, at least as satisfactory as the law and regulatory

requirements of New Zealand that relate to those matters and apply to insurers incorporated in New Zealand; and

(ii) the nature and extent of prudential supervision that applies to the applicant and to insurers generally in the applicant's home jurisdiction is appropriate, having regard to whether it is, in terms of achieving the purposes of this Act, at least as satisfactory as the nature and extent of prudential supervision that applies to insurers incorporated in New Zealand; and

(j) the applicant—

(i) is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008; or

(ii) complies with section 13(a) and (b) of that Act; and

(k) the applicant has the ability to comply with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (if the applicant is, or will be, a reporting entity under that Act); and

(l) the applicant complies with any other prescribed requirements.

(2) For the purposes of subsection (1)(c) and (d), the Bank must, in the case of an applicant that is an overseas person, have regard to any overseas policyholder preference.

(3) For the purposes of subsection (1)(i)(i), the matters are—

(a) the licensing, registration, or authorisation of insurers; and

(b) the supervision of insurers; and

(c) solvency and capital standards that apply to insurers; and

(d) financial reporting, accounting, and auditing standards; and

(e) corporate governance standards; and

(f) the disqualification of persons to be or act as directors or relevant officers of an insurer.

19 Carrying on business in prudent manner

(1) Subsection (2) applies when the Bank is—

(a) considering, for the purposes of section 18(1)(b), the ability of an applicant to carry on its business or proposed business in a prudent manner; or

(b) considering what conditions should be imposed under section 21 relating to the applicant carrying on its business or proposed business in a prudent manner; or

(c) considering whether a licensed insurer is carrying on its business in a prudent manner.

(2) The Bank must confine its consideration to the following matters:

(a) financial resources in relation to the size and nature of the business or proposed business:

(b) internal controls or proposed internal controls:

(c) size and type of insurance risk that is, or is proposed to be, carried by the applicant or insurer:

(d) reinsurance arrangements that have been, or are proposed to be, entered into:

(e) the extent to which the business or proposed business involves activities that are not insurance business and the nature of those activities (and, in particular, whether those activities may be prejudicial to the solvency of the applicant or insurer or its ability to comply with this Act or the regulations):

(f) the nature and extent of transactions that the applicant or insurer has with, or in respect of, related parties (for example, loans to, or from, a related party or guarantees in respect of a related party's debts):

(g) any other prescribed matters.

20 Lloyd's may apply for licence on behalf of underwriting members

(1) Lloyd's may apply for a licence in respect of the insurance business carried on by its underwriting members.

(2) If Lloyd's holds a licence, every underwriting member of Lloyd's may carry on insurance business in New Zealand as if the member held a licence.

(3) In this section, **Lloyd's** means the society of that name incorporated by the Imperial Act known as the Lloyd's Act 1871.

Conditions of licence

21 Conditions of licence

(1) A body corporate may be licensed as a licensed insurer unconditionally or subject to any conditions that the Bank may impose under subsection (2).

(2) A licence may be subject to any of the following conditions:

(a) conditions that relate to any of the matters referred to in section 19 (which relates to carrying on business in a prudent manner), including any matters prescribed by regulations made for the purposes of section 19(2)(g):

(b) a condition that requires a specified amount or proportion of the licensed insurer's insurance business to relate to New Zealand policyholders (whether that amount or proportion is defined in terms of premium revenue, amount of insurance liability, a combination of premium revenue and amount of insurance liability, or in any other way):

(c) in the case of a licensed insurer that has not yet commenced carrying on insurance business in New Zealand, either or both of the following:

(i) a condition that specifies the time period within which the insurer must commence carrying on insurance business in New Zealand:

(ii) a condition that specifies an amount of insurance business in New Zealand that the insurer must have within a specified period (whether that amount is defined in terms of premium revenue, amount of insurance liability, a combination of premium revenue and amount of insurance liability, or in any other way):

(d) a condition that requires the licensed insurer or the directors of the insurer (or both) to certify that any conditions have been complied with (being certification that is given at the time or times and in the manner specified in the condition):

(e) any other prescribed conditions or conditions that relate to prescribed matters.

22 Bank may modify conditions of licence

(1) The Bank may, at any time after a licence is issued, by notice in writing to the licensed insurer,—

(a) impose conditions of licence (whether or not the licence is already subject to conditions); or

(b) vary, remove, add to, or substitute any conditions of licence.

(2) Section 21(2) and (3) apply for the purposes of subsection (1) with all necessary modifications.

(3) The Bank must not exercise a power referred to in subsection (1) unless—

(a) the Bank gives the licensed insurer not less than 7 days' notice in writing of the Bank's intention to do so; and

(b) the notice contains, or is accompanied by, a statement of the Bank's reasons; and

(c) the licensed insurer has a reasonable opportunity to make submissions to the Bank; and

(d) the Bank has regard to those submissions.

23 Offence to fail to comply with conditions of licence

A licensed insurer commits an offence if it fails to comply with a condition of its licence and is liable, on summary conviction, to a fine not exceeding $500,000.

Notification of decision

24 Bank must notify applicant of decision

(1) The Bank must, after it has made a decision on an application for a licence, give written notice of the decision to the applicant.

(2) If the Bank refuses to issue a licence, the notice must contain, or be accompanied by, a statement of the Bank's reasons for the refusal.

25 Bank must give notice of issue of licence on Internet site

The Bank must give notice of the issue of a licence on the Bank's Internet site.

Cancellation of licence

26 Cancellation of licence

(1) The Bank may cancel a licence if the Bank is satisfied that—

(a) the licensed insurer—

(i) has asked the Bank, by written notice, to cancel its licence; or

(ii) has ceased to carry on insurance business in New Zealand; or

(iii) has breached a condition of the licence that requires it to commence carrying on insurance business in New Zealand; or

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

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

(vi) has been liquidated, wound up, or dissolved or has otherwise ceased to exist; and

(b) the licensed insurer has no liabilities under any contracts of insurance in respect of insurance business carried on by it in New Zealand.

(2) The Bank must not, in the case of subsection (1)(a)(i) to (iii), cancel a licence unless—

(a) the Bank gives public notice of the Bank's intention to do so; and

(b) the Bank sends a copy of the notice to the insurer; and

(c) the notice contains, or is accompanied by, a statement of the Bank's reasons; and

(d) the notice specifies the date by which an objection to the cancellation must be delivered to the Bank (which must be not less than 20 working days after the date of the notice); and

(e) the Bank has regard to any objections that are received before the date specified under paragraph (d).

(3) The Bank must, as soon as practicable after deciding to cancel a licence, give—

(a) public notice of the cancellation; and

(b) in the case of a cancellation under subsection (1)(a)(i), (ii), or (iii), written notice of the cancellation to the insurer.

(4) In this section, **public notice** means that the notice is published—

(a) in 1 or more daily newspapers circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and

(b) on the Bank's Internet site.

27 Assignment of liabilities to enable cancellation

(1) If the Bank considers that it would, under section 26, cancel a licence if the licensed insurer had no liabilities under any contracts of insurance in respect of insurance business carried on by it in New Zealand, the Bank may direct the insurer to arrange, subject to the Bank's approval, to assign its liabilities to 1 or more other licensed insurers.

(2) The licensed insurer must effect the assignment of the liabilities within the period specified in the direction and comply with any conditions relating to the assignment that are specified by the Bank in the direction.

(3) Subsections (1) and (2) have effect despite section 40(1) (which relates to transfers and amalgamations with the Bank's approval).

(4) The licensed insurer may, in connection with an assignment under this section, assign any rights or benefits in connection with contracts of insurance in respect of the insurance business carried on in New Zealand by the insurer (subject to any conditions specified by the Bank in the direction).

(5) A licensed insurer commits an offence if it fails to comply with a direction under this section and is liable, on summary conviction, to a fine not exceeding $500,000.

28 Bank's approval of assignment

(1) A licensed insurer must not assign its liabilities under section 27, and a purported assignment under that section is of no effect, unless the assignment is approved by the Bank under subsection (2).

(2) The Bank may only approve a proposed assignment of an insurer's liabilities under section 27 if the Bank is satisfied that the assignment is appropriate, having regard to—

(a) the interests of the insurer's policyholders; and

(b) the interests of the policyholders of the licensed insurer or insurers to whom the liabilities are to be assigned; and

(c) any other matter the Bank considers relevant.

(3) The approval must be in writing and may be made subject to specified conditions.

(4) If the Bank approves an assignment, the insurer must—

(a) comply with the conditions on the approval; and

(b) give reasonable notice (in writing) of the assignment to the insurer's policyholders; and

(c) give the Bank such written evidence of the assignment as the Bank reasonably requires.

29 Effect of assignment

If a licensed insurer (the **first insurer**) accepts an assignment of liabilities from another licensed insurer (the **second insurer**) approved by the Bank under section 28, the following are taken to have occurred:

(a) contracts of insurance in respect of which liability is accepted by the first insurer (the **transferring contracts**) are to be treated for all purposes as if each contract had been transferred by novation from the second insurer to the first insurer:

(b) a policyholder under a transferring contract is taken to have the same rights against the first insurer as the policyholder would have against that insurer had the person's contract of insurance been transferred by novation to the first insurer:

(c) the rights of the first insurer against policyholders under transferring contracts are the same as they would be had

the transferring contracts been transferred by novation to the first insurer from the second insurer.

Fit and proper requirements

30 Licensed insurer must have fit and proper policy for directors and relevant officers

(1) Every licensed insurer must—

(a) have a written policy that governs the qualifications, requirements, and other criteria that a person must have or satisfy in order to be appointed, and continue to hold a position, as a director or relevant officer of the insurer, being a policy for the purpose of ensuring that only fit and proper persons are appointed to, and continue to hold, those positions (a **fit and proper policy**); and

(b) take all practicable steps to comply with that policy.

(2) The fit and proper policy must clearly specify the qualifications, requirements, and other criteria for a particular position, including matters relating to the person's character, competence, and experience relative to the duties of the position.

(3) The qualifications, requirements, and other criteria for a particular position that are specified in the fit and proper policy must take into account the fit and proper matters set out in section 31.

(4) The fit and proper policy must—

(a) include the processes to be undertaken in assessing whether a person is fit and proper to be appointed to, and hold, a position, including processes relating to—

(i) who will conduct fit and proper assessments on behalf of the insurer; and

(ii) what information will be obtained and how it will be obtained; and

(iii) the matters that will be considered before determining if a person is fit and proper for a position; and

(iv) the decision-making processes that will be followed; and

(b) specify the actions to be taken where a person is assessed as not fit and proper; and

(c) require fit and proper reassessments for each position to be conducted at least once in every 2-year period, to ensure that the person who holds the position remains a fit and proper person; and

(d) must contain adequate provisions—

(i) to encourage any person to disclose information to the insurer or the Bank that may be relevant to a fit and proper assessment; and

(ii) to enable the disclosure to the Bank of any information the insurer is required to provide under this Act relating to fit and proper requirements; and

(iii) for giving or obtaining any consents required for the collection and use of any information by the insurer to comply with the policy or this Act, and by the Bank for its powers and functions under this Act.

(5) A licensed insurer may only amend its fit and proper policy with the Bank's approval.

(6) A licensed insurer that fails to comply with this section commits an offence and is liable, on summary conviction, to a fine not exceeding $500,000.

31 Fit and proper matters

(1) For the purposes of section 30, the fit and proper matters in relation to a particular position are as follows:

(a) whether the person has the qualifications and experience reasonably expected for the position:

(b) whether the person has been concerned or taken part in the management of an entity that has been—

(i) put into liquidation, receivership, or voluntary administration or has otherwise been wound up or dissolved; or

(ii) declared to be subject to statutory management or judicial management; or

(iii) subject to an arrangement or process under the laws of an overseas jurisdiction that corresponds, or is similar, to any of those specified in subparagraph (i) or (ii):

(c) whether the person has, in any civil or criminal proceedings, been found by a court or tribunal to have—
  (i) engaged in an act, omission, or course of conduct that constitutes serious wrongdoing; or
  (ii) aided, abetted, counselled, or procured any other person to engage in an act, omission, or course of conduct that constitutes serious wrongdoing:

(d) whether the person has at any time been adjudged bankrupt and, if the person has been discharged from bankruptcy, the time that has elapsed since the person was discharged:

(e) whether the person has at any time been admitted to the no asset procedure in subpart 4 of Part 5 of the Insolvency Act 2006 (or made subject to an arrangement or process under the laws of an overseas jurisdiction that corresponds, or is similar, to that procedure) and, if the person has been discharged from that procedure, arrangement, or process, the time that has elapsed since the person was discharged:

(f) whether the person—
  (i) is a subject of current disciplinary action in respect of a profession or occupation (being disciplinary action taken by a regulatory or disciplinary body for persons engaging in that profession or occupation); or
  (ii) has been the subject of disciplinary action of that kind that has involved a finding of guilt, however expressed:

(g) whether the person has at any time been prohibited from 1 or more of the following under an order made, or a notice given, under New Zealand law or the law of an overseas jurisdiction:
  (i) being a director of an entity:
  (ii) being a promoter of an entity:
  (iii) being concerned or taking part in the management of an entity:

(h) whether the person has at any time—

(i) failed to comply with the directions of the Bank given by or under this Act or any other enactment; or

(ii) failed to comply with the directions of an overseas supervisor given by or under the law of an overseas jurisdiction; or

(iii) obstructed or hindered the Bank in its exercise or performance of a power, function, or duty under this Act or any other enactment; or

(iv) obstructed or hindered an overseas supervisor in its exercise or performance of a power, function, or duty under the law of an overseas jurisdiction:

(i) whether the person has any conflict or potential conflict of interest (direct or indirect) that affects, or may affect, the person's proper performance of the duties of the position:

(j) whether the person has been convicted of an offence and, if so,—

(i) the nature of the offence; and

(ii) the circumstances in which the offence was committed (including the time that has elapsed since the offence was committed and the person's age when the offence was committed).

(2) The matters in subsection (1) apply whether the circumstance, conduct, or event is, or occurs, in New Zealand or any other country.

32 Licensed insurer must provide fit and proper notice for new directors or relevant officers or if Bank requires notice

(1) A licensed insurer must, no later than 20 working days after the appointment of a new director or relevant officer, provide to the Bank a notice that complies with subsection (4) in respect of the new director or relevant officer.

(2) In addition, if the Bank has given a notice in writing to a licensed insurer that requires the insurer to provide to the Bank a notice that complies with subsection (4) in respect of a specified director or relevant officer, the insurer must, within the time specified in the notice, comply with the requirement.

(3) Subsection (2) applies whether or not a notice in respect of the director or officer has previously been provided under this section.

(4) The notice must—

(a) specify the director's or relevant officer's full name, previous names (if any), and residential address; and

(b) in the case of subsection (1), specify the date of the appointment and the director's or relevant officer's date of birth; and

(c) state that, in the opinion of all directors of the licensed insurer after due enquiry by them, the director or relevant officer is, in accordance with its fit and proper policy, a fit and proper person to hold the relevant position; and

(d) contain, or be accompanied by, a certificate signed by the director or relevant officer that states that, in his or her opinion, he or she is, in accordance with the licensed insurer's fit and proper policy, a fit and proper person to hold the relevant position; and

(e) contain, or be accompanied by, a summary of information that is relevant to the consideration of whether the person satisfies the licensed insurer's fit and proper policy; and

(f) be signed on behalf of all the directors of the licensed insurer by at least 2 directors of the insurer (or, if the insurer has only 1 director, by that director); and

(g) be in the prescribed form (if any).

(5) Every licensed insurer that is required to provide a notice to the Bank under this section must provide to the Bank any further information that is required by the Bank to assist it in considering whether the director or relevant officer is a fit and proper person to hold the relevant position.

(6) A licensed insurer commits an offence if the insurer fails to comply with this section and is liable, on summary conviction, to a fine not exceeding $500,000.

33 Power to remove directors and relevant officers

(1) This section applies if the Bank, after having regard to the fit and proper matters specified in section 31, has reasonable

grounds to believe that a director or relevant officer of a licensed insurer is not a fit and proper person to hold the relevant position.

(2) If this section applies, the Bank may remove the director or relevant officer from the relevant position from a date specified by the Bank.

(3) If the Bank acts under subsection (2), the Bank may give a direction that the director or relevant officer may not be reappointed as a director or relevant officer of the licensed insurer—

(a) at any time; or

(b) for a period specified by the Bank; or

(c) until 1 or more things specified by the Bank occur (for example, the director or relevant officer receives a specified qualification).

(4) This section may apply regardless of whether or not the director or relevant officer is, in accordance with the licensed insurer's fit and proper policy, a fit and proper person to hold his or her position.

(5) This section does not apply in respect of a director of an overseas insurer.

(6) This section has effect despite any contract, employment agreement, enactment, or rule of law, or the terms of the constitution of a licensed insurer.

34 How power to remove is exercised

(1) The Bank must not exercise a power referred to section 33 unless—

(a) the Bank gives the licensed insurer and the director or relevant officer not less than 7 days' notice in writing of the Bank's intention to do so; and

(b) the notice contains, or is accompanied by, a statement of the Bank's reasons; and

(c) the licensed insurer and the director or relevant officer have a reasonable opportunity to make submissions to the Bank; and

(d) the Bank has regard to those submissions.

(2) The Bank must exercise the powers conferred by section 33 by giving notice in writing to—
  (a) the licensed insurer; and
  (b) the director or the relevant officer; and
  (c) in the case of a director, the Registrar of Companies.

(3) A notice given under subsection (2)(c) is sufficient compliance with section 159 of the Companies Act 1993.

(4) A notice given under this section may be amended, revoked, or replaced in the same way as it may be given.

35 Former director or relevant officer must not accept reappointment in breach of direction

(1) If a person has been removed from a particular position under section 33, the person may not accept reappointment to the position in breach of a direction given under section 33(3).

(2) A person commits an offence if the person fails to comply with subsection (1) and is liable, on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both).

36 Appeals from Bank's decision

(1) A director or relevant officer or former director or relevant officer that is the subject of a decision of the Bank under section 33 may appeal to the High Court against the decision.

(2) An appeal—
  (a) must be brought by way of notice of appeal in accordance with the rules of court; and
  (b) must be lodged within—
    (i) 20 working days after the date of the notice under section 34(2); or
    (ii) any further time the High Court allows on application made before or after that period expires.

37 Decision to have effect pending determination of appeal

A decision against which an appeal under section 36 is lodged continues in force pending the determination of the appeal unless the High Court orders otherwise.

38 Procedure on appeal

(1) An appeal must be heard as soon as practicable after it is lodged.

(2) An appeal is by way of rehearing.

(3) On hearing the appeal, the High Court may—

(a) confirm, reverse, or modify the decision appealed against; and

(b) make any decision that the Bank could have made in respect of the matter.

39 Appeal to Court of Appeal on question of law

(1) Any party to an appeal under section 36 who is dissatisfied with any determination of the High Court in the proceedings as being erroneous in point of law may, with the leave of the High Court or, if the High Court refuses leave, with the leave of the Court of Appeal, appeal to the Court of Appeal against the determination; and section 66 of the Judicature Act 1908 applies to any such appeal.

(2) In determining whether to grant leave to appeal, the Court of Appeal must have regard to whether the question of law involved in the appeal is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for its decision.

(3) The Court of Appeal, in granting leave, may impose the conditions that it thinks fit, whether as to costs or otherwise.

(4) The decision of the Court of Appeal on any application for leave to appeal, or on an appeal under this section, is final.

Transfers and amalgamations

40 Transfers and amalgamations must be approved

(1) A licensed insurer must obtain the written approval of the Bank before—

(a) giving effect to a transaction that involves the transfer of all or part of the insurer's insurance business to another person; or

(b) the insurer amalgamates with another person (whether it occurs under Part 13 of the Companies Act 1993 or

any other law of similar effect that results in 2 or more entities amalgamating and continuing as 1 entity).

(2) For the purposes of sections 41 to 45,—

amalgamated entity means the 1 entity that is proposed to result from and continue after a proposed amalgamation that requires approval under this section

transferee means the person to whom all or part of the licensed insurer's insurance business is proposed to be transferred under a proposed transfer that requires approval under this section.

(3) A licensed insurer commits an offence if—

(a) the insurer fails to comply with subsection (1); or

(b) in the case of the Bank refusing to give its approval under subsection (1), the insurer takes any further steps after the refusal under the Companies Act 1993 or any other enactment to give effect to the proposed transfer or amalgamation.

(4) Every licensed insurer that commits an offence under subsection (3) is liable, on summary conviction, to a fine not exceeding $1,000,000.

(5) This section does not apply in respect of a transfer or amalgamation under section 27, sections 165 to 168, or subpart 4 of Part 4.

41 Request for approval

(1) A request for the Bank to give its approval under section 40 must be—

(a) made in the manner that is specified by the Bank; and

(b) accompanied by payment of the prescribed fee for the request (if any).

(2) A joint request may be made by 2 or more licensed insurers that are parties to the proposed transfer or amalgamation.

(3) A licensed insurer that makes a request and every other party to the proposed transfer or amalgamation must provide to the Bank the information that is required by the Bank to assist it in determining whether to give its approval.

42 Actuarial report on transfer or amalgamation proposal

(1) The Bank may arrange for an independent actuary to make a written report on the proposed transfer or amalgamation.

(2) A licensed insurer that makes a request and every other party to the proposed transfer or amalgamation must provide to the actuary the information that is required by the actuary to assist him or her in preparing the report.

43 Costs of actuary's report

(1) A licensed insurer that makes a request under section 41 is liable to pay to the Bank the costs incurred by the Bank in obtaining the actuary's report under section 42 (and in the case of a joint application, the licensed insurers are jointly and severally liable to pay those costs).

(2) An amount payable under subsection (1) is recoverable as a debt due to the Bank in any court of competent jurisdiction.

44 Bank must have regard to certain matters in considering request

In considering a request made under section 41, the Bank must have regard to all of the following matters:

(a) the ability of the transferee, or the amalgamated entity, to comply with subpart 2 and, if applicable, subpart 3:

(b) the interests of the policyholders of the insurers that are parties to the proposed transfer or amalgamation:

(c) any other prescribed matters.

45 Bank's decision on approval

(1) The Bank may, after considering a request made under section 41,—

(a) give its approval unconditionally or subject to any conditions that the Bank may impose under subsection (2); or

(b) refuse to give its approval.

(2) The approval may be subject to any of the following conditions:

(a) conditions that relate to any of the matters referred to in section 19 (which relates to carrying on business in a prudent manner), including any matters prescribed by regulations made for the purposes of section 19(2)(g):

(b) a condition that requires a specified amount or proportion of the transferee's or amalgamated entity's insurance business to relate to New Zealand policyholders (whether that amount or proportion is defined in terms of premium revenue, amount of insurance liability, a combination of premium revenue and amount of insurance liability, or in any other way):

(c) a condition that requires a licensed insurer or the directors of a licensed insurer (or both) to certify that any conditions have been complied with (being certification that is given at the time or times and in the manner specified in the condition):

(d) any other prescribed conditions or conditions that relate to prescribed matters.

46 Bank may modify conditions of approval

(1) The Bank may, at any time after its approval has been given under section 45 but before the transfer or amalgamation takes place, by notice in writing to a licensed insurer or insurers,—

(a) impose conditions of approval (whether or not the approval is already subject to conditions); or

(b) vary, remove, add to, or substitute any conditions of the approval.

(2) Section 45(2) and (3) apply for the purposes of subsection (1) with all necessary modifications.

(3) The Bank must not exercise a power referred to in subsection (1) unless—

(a) the Bank gives the licensed insurer or insurers not less than 7 days' notice in writing of the Bank's intention to do so; and

(b) the notice contains, or is accompanied by, a statement of the Bank's reasons; and

(c) the licensed insurer or insurers have a reasonable opportunity to make submissions to the Bank; and

(d) the Bank has regard to those submissions.

47 Offence to fail to comply with conditions of approval

A licensed insurer commits an offence if it fails to comply with a condition of the approval and is liable, on summary conviction, to a fine not exceeding $500,000.

48 Requirement for approval is in addition to other legal requirements

Sections 40 to 47 do not limit any other enactment or rules of law that must be complied with in order to give effect to a proposed transfer or amalgamation that requires approval under section 40 (for example, in the case of amalgamating companies, the requirements of Part 13 of the Companies Act 1993).

49 Transfer or amalgamation not invalidated

Nothing in sections 40 to 48 invalidates any transfer or amalgamation made without the written approval of the Bank.

Subpart 2—Prudential regulation of insurers

Solvency standards

50 Bank may approve solvency standards

(1) The Bank may, by a notice signed by the Governor, approve solvency standards for the purposes of this Act.

(2) A solvency standard may be expressed to apply in relation to—
- (a) all licensed insurers; or
- (b) a specified class or classes of licensed insurers; or
- (c) 1 or more specified licensed insurers.

(3) A solvency standard may—
- (a) have general or specific application:
- (b) differ according to differences in time or circumstance.

(4) A solvency standard is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

51 Public notice of solvency standards

(1) The Bank must give notice of the approval of a solvency standard in the *Gazette*.

(2) The notice in the *Gazette* must state—
- (a) the name of the solvency standard; and
- (b) a brief description of the nature of the solvency standard; and
- (c) where copies of the solvency standard are available for inspection and purchase.

(3) The notice in the *Gazette* need not contain the solvency standard.

(4) The Bank must make a solvency standard available to the public by making copies of it available—
- (a) for inspection at all reasonable times, free of charge,—
  - (i) at the head office of the Bank; and
  - (ii) on the Bank's Internet site; and
- (b) for purchase at all reasonable times and at a reasonable price.

52 Consultation

(1) The Bank must not approve a solvency standard unless—
- (a) the Bank has consulted with the persons or representatives of the persons that the Bank considers will be substantially affected by the approval of the standard; and
- (b) those persons have had a reasonable opportunity to comment to the Bank; and
- (c) the Bank has considered those comments.

(2) A failure to comply with subsection (1) does not affect the validity of the approval by the Bank of the standard.

53 Solvency margin

(1) A solvency standard may prescribe a minimum margin (**solvency margin**) by which the value of the assets of a licensed insurer must exceed the value of its liabilities, including contingent liabilities.

(2) A solvency standard may also prescribe a solvency margin in respect of the statutory funds of a life insurer (being a minimum margin by which the value of the assets of a statutory

fund must exceed the value of the fund's liabilities, including contingent liabilities).

(3) A solvency margin may be prescribed in terms of an amount that is calculated by reference to a specified formula, a specified amount, or both.

54 Other matters that may be contained in solvency standards

(1) A solvency standard may prescribe 1 or more of the following matters:

(a) the methods for valuing or estimating the assets or liabilities (or both) of a licensed insurer:

(b) items that must be deducted from the value of the assets of a licensed insurer or that must be disregarded (in whole or in part) for the purposes of valuing or estimating the assets of a licensed insurer (for example, assets relating to related party transactions or non-insurance related business):

(c) any other matters relating to the assessment, or disclosure, of—

(i) whether, and the extent to which, the value of a licensed insurer's assets exceeds the value of its liabilities (including contingent liabilities); or

(ii) whether a licensed insurer is able to pay its liabilities as they become due in the normal course of business; or

(iii) other matters relating to the financial condition of a licensed insurer:

(d) any matters referred to in paragraphs (a) to (c) in respect of the assets, liabilities, and financial condition of statutory funds:

(e) any matters for the purposes of section 113(4) or otherwise contemplated by subpart 3:

(f) matters relating to the manner in which an audit of actuarial information under section 75 is to be carried out.

(2) A solvency standard that prescribes a matter in subsection (1)(a) to (e) may be expressed to apply in respect of 1 or more of the following:

(a) the preparation of financial statements, group financial statements, or other financial information under, or in accordance with, the Financial Reporting Act 1993 (with the effect that the standard must be complied with as an approved financial reporting standard under that Act):

(b) the assessment for the purposes of this Act of whether, and the extent to which,—

(i) the value of a licensed insurer's assets exceeds the value of its liabilities (including contingent liabilities):

(ii) the value of a statutory fund's assets exceeds the value of its liabilities (including contingent liabilities):

(c) for the purposes of subpart 3:

(d) matters that may be relevant to an assessment of whether a company satisfies the solvency test (within the meaning of section 4 of the Companies Act 1993):

(e) the preparation of a financial condition report under section 78.

(3) If there is an inconsistency between a solvency standard that applies in accordance with subsection (2)(a) and a financial reporting standard approved by the Accounting Standards Review Board under the Financial Reporting Act 1993, the solvency standard prevails.

55 Incorporation by reference

(1) The following written material may be incorporated by reference in a solvency standard:

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

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

(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 solvency standard.

(2) Schedule 1 applies to any material incorporated by reference in a solvency standard.

56 Bank may amend or revoke solvency standard

(1) The Bank may, by a notice signed by the Governor, approve—

(a) an amendment to a solvency standard or the revocation of a solvency standard:

(b) the revocation and replacement of a solvency standard.

(2) Sections 51 and 52 apply, with all necessary modifications, for the purposes of subsection (1).

(3) However, the Bank is not required to comply with section 52 in respect of an amendment to an approved solvency standard if, in its opinion, the amendment corrects a minor error or is otherwise of a minor nature.

57 Licensed insurer must ensure that solvency margin maintained

(1) A licensed insurer must, at all times, ensure that the value of its assets exceeds the value of its liabilities (including contingent liabilities) by not less than the solvency margin that applies to it under the solvency standards.

(2) A life insurer, in addition to complying with subsection (1), must, at all times, ensure that the value of the assets of each of its statutory funds exceeds the value of the fund's liabilities (including contingent liabilities) by not less than the solvency margin that applies to the fund under the solvency standards.

(3) For the purposes of this Act, a licensed insurer is **failing to maintain a solvency margin** if it fails to comply with subsection (1) or (2).

(4) A licensed insurer that fails to comply with this section commits an offence and is liable, on summary conviction, to a fine not exceeding $500,000.

58 Bank may require licensed insurer to certify compliance with solvency margin

(1) The Bank may require a licensed insurer to certify to the Bank, at a time and in a manner specified by the Bank, that the insurer is satisfied that it has been, and is, complying with section 57.

(2) If the Bank requires a licensed insurer to certify to the Bank under this section, the insurer must either—

(a) provide a certificate in accordance with the requirement; or

(b) if the insurer is not able to certify to the Bank as required, the insurer must, within the time frame specified under subsection (1), report the reason, including the details of any non-compliance or suspected non-compliance.

(3) A licensed insurer must, if required by the Bank, have the certificate verified by the insurer's actuary in a manner and within any reasonable time that the Bank may specify.

(4) The actuary's report for the purposes of subsection (3) must state the matters specified in section 76(a) to (e) and whether, in the actuary's opinion and from an actuarial perspective,—

(a) the licensed insurer's certificate is true and fair; and

(b) the assumptions used by the insurer in providing the certificate are reasonable and in accordance with the solvency standards.

(5) A licensed insurer that fails to comply with this section commits an offence and is liable, on summary conviction, to a fine not exceeding $500,000.

59 Certificate must be signed by directors or New Zealand chief executive officer

(1) A certificate provided under section 58 in respect of a licensed insurer must be signed by,—

(a) in the case of an overseas insurer, its New Zealand chief executive officer:

(b) in any other case, every director of the insurer.

(2) However, the New Zealand chief executive officer or a director is not required to sign the certificate if he or she—

(a) does not agree with the certificate at the time that it is provided; and

(b) reports to the Bank as soon as practicable after the certificate is provided the reason for not agreeing with the certificate, including the details of any non-compliance or suspected non-compliance.

(3) A person that fails to comply with subsection (1) commits an offence and is liable, on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both).

60 Licensed insurer must report likely failure to comply with solvency margin

(1) If a licensed insurer knows, or could be reasonably expected to know, that the insurer is likely to fail to maintain a solvency margin at any future time, it must as soon as practicable report that matter to the Bank.

(2) Every licensed insurer that fails to comply with subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding $500,000.

61 Bank may exempt overseas insurer from compliance

(1) The Bank may, by notice to an overseas insurer, exempt the insurer from compliance with a solvency standard or a part of a solvency standard.

(2) The Bank may grant an exemption unconditionally or subject to any conditions that the Bank thinks fit.

(3) The Bank must, before granting an exemption, be satisfied that—

(a) the overseas insurer is required, under the law or regulatory requirements of its home jurisdiction, to comply with standards or requirements that relate to the same or similar matters that are covered by the solvency standard or part of a solvency standard to which the exemption relates (the **overseas standards or requirements**); and

(b) the overseas standards or requirements—

(i) cover the insurer's New Zealand business; and

(ii) are, in terms of achieving the purposes of this Act, at least as satisfactory as the solvency standard or part of a solvency standard to which the exemption relates; and

(c) the nature and extent of prudential supervision that applies to the overseas insurer in respect of the overseas standards or requirements is, in terms of achieving the

purposes of this Act, at least as satisfactory as the nature and extent of prudential supervision that applies to insurers incorporated in New Zealand in respect of the solvency standard or part of a solvency standard to which the exemption relates.

(4) The Bank must give notice of an exemption on the Bank's Internet site.

(5) The Bank's reasons for granting an exemption (including why an exemption is appropriate) must be notified on the Bank's Internet site, together with the exemption.

(6) However, the Bank may defer notifying or not notify the reasons for granting an exemption if the Bank is satisfied on reasonable grounds that it is proper to do so on the ground of commercial confidentiality.

(7) The Bank may amend or revoke an exemption in the same way as an exemption may be granted under this section.

(8) An exemption is not a regulation for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.

Credit ratings

62 Licensed insurer must have current credit rating

(1) A licensed insurer must have a current credit rating that—

(a) complies with the requirements prescribed by regulations made under section 64; and

(b) is given by an approved rating agency.

(2) Subsection (1) does not apply to—

(a) a licensed insurer if the insurer has an annual gross premium income (as determined in the prescribed manner) that is less than a prescribed amount; or

(b) a licensed insurer if it has not yet commenced insurance business or has been carrying on insurance business for less than 1 year; or

(c) a licensed insurer if the only kind of insurance business carried on by the insurer is reinsurance business; or

(d) a captive insurer.

(3) A licensed insurer commits an offence if it fails to comply with this section and is liable, on summary conviction, to a fine not exceeding $1,000,000.

63 Bank may approve rating agencies

(1) The Bank may approve a person as a rating agency for the purposes of this Act.

(2) In deciding whether to approve a person as a rating agency, the Bank must have regard to the following:

(a) the independence of the rating agency:

(b) the adequacy of resources available to the rating agency:

(c) the credibility and objectivity of the rating agency's methodology:

(d) the consistency and comparability of the rating agency's ratings when assessed against ratings industry practice:

(e) the adequacy of the rating agency's disclosure of information, including information about its processes, experience, and ownership:

(f) relevant international standards, codes, and recommended practices relating to the ratings industry.

(3) The Bank may, at any time, review the approval of a person as a rating agency, and in conducting the review the Bank must have regard to the matters in subsection (2).

(4) If, after conducting the review, the Bank considers that the person should no longer be an approved rating agency, it may revoke the approval.

(5) The Bank must publish and keep up to date a list of approved rating agencies on the Bank's Internet site at all reasonable times.

64 Regulations relating to credit ratings

The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations providing for the following matters in relation to credit ratings required to be held by licensed insurers:

(a) the type of rating (for example, whether it is a short-term or long-term rating):

(b) what the rating relates to (for example, whether it indicates the creditworthiness of a licensed insurer or its claims-paying ability):

(c) in the case of an overseas insurer,—

(i) requiring the rating to contain, or be accompanied by, a reference to any overseas policyholder preference:

(ii) the manner in which a reference required under subparagraph (i) is to be disclosed and the form that the reference must take.

65 Disclosure of current rating to policyholder

(1) A licensed insurer that is required to comply with section 62(1) must, before entering into or renewing a contract of insurance, disclose in writing to the policyholder—

(a) the insurer's current credit rating and the date on which it was given; and

(b) the rating scale of which the rating referred to in paragraph (a) forms part; and

(c) any credit watch warning or other qualification relating to the rating referred to in paragraph (a), together with the date on which it was given and the reasons for it.

(2) If it is not reasonably practicable for a licensed insurer to disclose the matters referred to in subsection (1) in writing and before the contract is entered into or renewed, that subsection is deemed to have been complied with if—

(a) the matters referred to in that subsection (other than the rating scale) are disclosed to the policyholder orally before the contract is entered into or renewed; and

(b) the matters referred to in that subsection are disclosed to the policyholder in writing as soon as it becomes practicable to do so.

(3) For the purposes of this section, a matter is not to be taken as having been disclosed unless it is disclosed clearly and prominently.

(4) If a contract of insurance is entered into or renewed, as the case may be, and this section has not been complied with, the policyholder may, within 20 working days after the contract

is entered into or renewed, cancel the contract by notice in writing to the insurer.

(5) If a contract of insurance is cancelled under subsection (4), the policyholder ceases to be liable for the payment of any premiums relating to the period commencing on the date on which the contract is cancelled and ending on the date on which the contract would have terminated, and any premiums paid by the policyholder to the insurer or any intermediary that relate to that period must be repaid to the policyholder by the insurer.

(6) This section does not apply to a reinsurer in respect of its reinsurance business.

(7) In this section and section 66, **policyholder** means the person who is entering into or renewing the contract of insurance.

66 Disclosure by insurers not required to be rated

(1) A licensed insurer that does not have a current credit rating as a result of section 62(2)(a) or (b) must, before entering into a contract of insurance or renewing a contract of insurance, disclose in writing to the policyholder—

(a) that the insurer is not required to have a current credit rating; and

(b) the reason why it is not required to have a current credit rating.

(2) If it is not reasonably practicable for a licensed insurer to disclose the matters referred to in subsection (1) in writing and before the contract is entered into or renewed, that subsection is be deemed to have been complied with if those matters are disclosed to the policyholder—

(a) orally before the contract is entered into or renewed; and

(b) in writing as soon as it becomes practicable to do so.

(3) For the purposes of this section, a matter is not to be taken as having been disclosed unless it is disclosed clearly and prominently.

(4) If a contract of insurance is entered into or renewed, as the case may be, and this section has not been complied with, the policyholder may, within 20 working days after the contract is entered into or renewed, cancel the contract by notice in writing to the insurer.

(5) If a contract of insurance is cancelled under subsection (4), the policyholder ceases to be liable for the payment of any premiums relating to the period commencing on the date on which the contract is cancelled and ending on the date on which the contract would have terminated, and any premiums paid by the policyholder to the insurer or any intermediary that relate to that period must be repaid to the policyholder by the insurer.

67 Disclosure of rating on insurer's Internet site

(1) If an Internet site that is maintained by, or on behalf of, a licensed insurer that is required to comply with section 62(1) contains information or advertising about the insurer's insurance products, the insurer must ensure that every page on that site that contains the information or advertising also—

(a) states clearly and prominently—

(i) the insurer's current credit rating under section 62 and the date on which it was given; and

(ii) the rating scale of which the rating referred to in subparagraph (i) forms part; and

(iii) any credit watch warning or other qualification relating to the rating referred to in subparagraph (i), together with the date on which it was given and the reasons for it; or

(b) contains a prominent link to another page that clearly and prominently states the matters specified in paragraph (a).

(2) This section does not apply to a reinsurer in respect of its reinsurance business.

68 Other advertising of ratings

(1) No advertisement that refers to the current credit rating, or to any part of the rating, of a licensed insurer may be distributed unless the advertisement also states clearly and prominently—

(a) the rating and the date on which it was given; and

(b) the name of the agency by which the rating was given; and

(c) any credit watch warning or other qualification relating to the rating; and

(d) that any scale of which the rating forms part is available for inspection at any office in New Zealand of the insurer.

(2) For the purposes of this section, an advertisement is distributed if it is communicated to the public by newspaper, magazine, brochure, pamphlet, notice, circular, radio or television broadcast, film, the Internet, or other means.

(3) However, this section does not apply if section 67 applies.

(4) This section does not apply to a reinsurer in respect of its reinsurance business.

69 Offence to fail to comply with disclosure obligations

A licensed insurer commits an offence if it fails to comply with any of sections 65 to 68 and is liable, on summary conviction, to a fine not exceeding $500,000.

Disclosure of overseas policyholder preference

70 Overseas insurer must disclose overseas policyholder preference

(1) If an overseas policyholder preference may apply in respect of a licensed insurer that is an overseas insurer, the insurer must disclose the nature and the extent of the overseas policyholder preference in the circumstances and in the manner that is prescribed.

(2) An overseas insurer commits an offence if it fails to comply with this section and is liable, on summary conviction, to a fine not exceeding $500,000.

Risk management

71 Licensed insurer must have and comply with risk management programme

(1) A licensed insurer must have a risk management programme and take all practicable steps to comply with that programme.

(2) The risk management programme must—

(a) be in writing; and

(b) set out the procedures that the licensed insurer will use for the effective identification and management of the following risks:
  (i) insurance risk:
  (ii) credit risk:
  (iii) liquidity risk:
  (iv) market risk:
  (v) operational risk:
  (vi) a prescribed type of risk (being a type of risk that is specified in the regulations to apply to the insurer or to a specified class of insurers that includes the insurer):

(c) set out appropriate and auditable documentation and record-keeping requirements; and

(d) describe the steps that the licensed insurer will take to ensure that the programme remains current, which must include procedures for—
  (i) regular review of the programme to systematically identify deficiencies in the effectiveness of the programme; and
  (ii) obtaining the approval of the Bank to amendments to the programme that are necessary to address the deficiencies; and

(e) be appropriate to the operations of the licensed insurer, having regard to the factors relevant to the risks referred to in paragraph (b) (for example, the size of the licensed insurer, its corporate structure (including its relationship with associated persons), its funding structure, the market sector in which it operates, and its business strategy).

(3) The Bank may issue, in the manner that the Governor thinks fit, guidelines relating to the risk categories referred to in subsection (2)(b) that must be covered by the risk management programme.

(4) A licensed insurer may only amend its risk management programme with the Bank's approval.

72 Bank may require licensed insurer to have risk management programme audited

(1) The Bank may require the licensed insurer to have the risk management programme audited in a specified manner within any reasonable time that the Bank may specify.

(2) The licensed insurer must comply with a requirement of the Bank under subsection (1) within the time specified by the Bank.

(3) If, after the audit, the Bank is not satisfied that the risk management programme meets the requirements in section 71(2),—

(a) the Bank may require the licensed insurer to amend the programme in the manner specified by the Bank and to resubmit the programme to the Bank for approval within any reasonable time that the Bank may specify; and

(b) the licensed insurer must comply with those requirements.

73 Offence to fail to comply with risk management requirements

A licensed insurer commits an offence if it fails to comply with any of sections 71 and 72 and is liable, on summary conviction, to a fine not exceeding $500,000.

Actuarial audit and financial condition report

74 Requirement for licensed insurers to have actuary

(1) A licensed insurer must have an actuary appointed by the insurer.

(2) The licensed insurer must, within 6 weeks after a person stops being the insurer's actuary, appoint another person to be its actuary.

(3) A licensed insurer must not appoint a person as the insurer's actuary unless the person is, in accordance with its fit and proper policy, a fit and proper person to hold the position.

(4) An appointment of a person as an insurer's actuary cannot take effect while an appointment of another person in that position is current.

75 Audit of actuarial information in financial statements

(1) A licensed insurer must ensure that the specified information contained in the financial statements of the insurer, and any group financial statements, referred to in section 80(1) is audited by the insurer's actuary.

(2) The audit must be carried out in accordance with the solvency standards.

(3) For the purposes of this section and section 76, **specified information** means—

(a) actuarial information; and

(b) information that is derived from or based upon actuarial information.

(4) A licensed insurer commits an offence if it fails to comply with this section and is liable, on summary conviction, to a fine not exceeding $500,000.

76 Actuary's report

The actuary's report in respect of an audit under section 75 must state—

(a) the actuary's name; and

(b) the work done by the actuary; and

(c) the scope and limitations of the audit; and

(d) the existence of any relationship (other than that of actuary) that the actuary has with, or any interests which the actuary has in, the licensed insurer or any of its subsidiaries; and

(e) whether the actuary has obtained all information and explanations that he or she has required; and

(f) whether, in the actuary's opinion and from an actuarial perspective, the financial statements and any group financial statements comply with the solvency standards in respect of the specified information contained in them, and if they do not, the respects in which they fail to comply; and

(g) whether, in the actuary's opinion and from an actuarial perspective, the value of the licensed insurer's assets exceeds the value of its liabilities (including contingent liabilities) by not less than the solvency margin that applies to the insurer (as at the balance date of the insurer).

77 Provisions relating to auditor's report and audit conducted by auditor

(1) A licensed insurer must ensure that the auditor's report that is prepared under section 16 of the Financial Reporting Act 1993 is accompanied by the actuary's report prepared under section 76 when—

(a) the auditor's report is delivered for registration under section 18 of that Act; and

(b) the auditor's report is included in the insurer's annual report (in the case of an insurer that includes the auditor's report in its annual report).

(2) If an auditor relies on an actuary's audit, the auditor's report prepared under section 16 of the Financial Reporting Act 1993 must summarise the extent to which the auditor has relied on the actuary's report.

78 Financial condition report

(1) A licensed insurer must ensure that, after the end of every accounting period of the insurer, an investigation by the insurer's actuary is made into its financial condition as at the end of that period.

(2) A licensed insurer must ensure that, on or before the date on which the financial statements of the insurer for an accounting period are required to be registered under section 18 of the Financial Reporting Act 1993,—

(a) the actuary's report in respect of the investigation is prepared; and

(b) a copy is provided to the insurer's governing body; and

(c) a copy is provided to the Bank.

(3) The actuary's report must—

(a) provide the actuary's objective assessment of the overall financial condition of the insurer; and

(b) be prepared in accordance with the solvency standards; and

(c) be in the prescribed form.

(4) A licensed insurer commits an offence if it fails to comply with subsection (1) or (2) and is liable, on summary conviction, to a fine not exceeding $500,000.

Actuaries must have access to information

79 Access to information

(1) A licensed insurer must ensure that any specified actuary has access at all times to the accounting records and other documents of the insurer.

(2) A licensed insurer commits an offence if it fails to comply with subsection (1) and is liable, on summary conviction, to a fine not exceeding $1,000,000.

(3) A specified actuary is entitled to require from a director or employee of the insurer such information and explanations as he or she thinks necessary for the performance of his or her duties as an actuary.

(4) A director or employee commits an offence if he or she fails to comply with subsection (3) and is liable, on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both).

(5) It is a defence to an employee charged with an offence under subsection (4) if he or she proves that—

(a) he or she did not have the information required in his or her possession or under his or her control; or

(b) by reason of the position occupied by him or her or the duties assigned to him or her, he or she was unable to give the explanations required.

(6) In this section, **specified actuary**, in relation to a licensed insurer, means—

(a) the insurer's actuary; or

(b) an actuary that is appointed under any of the provisions of this Act to investigate, or otherwise prepare a report in respect of, the insurer.

Supply of financial statements

80 Financial statements must be delivered to Bank

(1) A licensed insurer must ensure that, within 3 months after the end of each accounting period of the insurer, copies of the financial statements of the insurer and any group financial statements for that period together with a copy of the auditor's report on those statements are delivered to the Bank.

(2) The financial statements and group financial statements referred to in subsection (1) must be prepared in accordance with the Financial Reporting Act 1993.

(3) A licensed insurer must, within 3 months after the end of the first half of each accounting period of the insurer,—

(a) prepare interim financial statements of the insurer for that half-year; and

(b) prepare interim group financial statements for a group comprising the insurer and its subsidiaries for that half-year; and

(c) ensure that copies of those statements together with a copy of the auditor's report on those statements (if any) are delivered—

(i) to the Bank; and

(ii) for registration to the Registrar (within the meaning of section 2 of the Financial Reporting Act 1993).

(4) The interim financial statements and interim group financial statements must—

(a) be audited if required by the regulations; and

(b) be prepared in accordance with requirements prescribed by the regulations (which may, for example, require compliance with generally accepted accounting practice in whole or in part and with any modifications, additions, or variations that may be prescribed).

(5) A licensed insurer commits an offence if it fails to comply with this section and is liable, on summary conviction, to a fine not exceeding $100,000.

Subpart 3—Statutory funds of life insurer

General requirements

81 Requirement that life insurer have statutory funds

(1) A life insurer must at all times have at least 1 statutory fund in respect of its life insurance business (but may have more statutory funds if it chooses to do so).

(2) A statutory fund is a fund that—

(a) is established in the records of a life insurer; and

(b) relates solely to the life insurance business of the life insurer or a particular part of that business.

(3) Subsection (2)(b) is subject to section 118 (which allows a statutory fund to relate to a limited amount of non-life insurance business).

82 Outline of requirements regarding statutory funds

The principal requirements of this subpart in relation to statutory funds may be summarised as follows:

(a) all amounts received by a life insurer in respect of the business of a fund must be credited to the fund:

(b) all assets and investments related to the business of a fund must be included in the fund:

(c) all liabilities (including policy liabilities) of the life insurer arising out of the conduct of the business of a fund must be treated as liabilities of the fund:

(d) the assets of a fund are only available for expenditure related to the conduct of the business of the fund:

(e) funds may not be restructured or terminated without the approval of the Bank:

(f) profits and losses of a fund may only be dealt with in accordance with sections 107 to 114 (the object of those sections being to ensure that such profits and losses are dealt with in a manner that protects the interests of policy owners and is consistent with prudent management of the fund).

83 Interpretation in this subpart

(1) In this subpart, unless the context otherwise requires,—

life insurance business means—

(a) business that consists of any or all of the following:

(i) the issuing of life policies:

(ii) the undertaking of liability under life policies; and

(b) any business that relates to business referred to in paragraph (a) (including, without limitation, business relating to the investment, administration, and management of the assets of a statutory fund)

policy document means a document that sets out, or the documents that together set out, the terms of a contract that is a life policy, and includes an endorsement on such a document

policy liability, in relation to a life insurer, means—

(a) a liability that has arisen under a life policy:

(b) a liability that, subject to the terms and conditions of a life policy, will arise on the happening of an event, or at a time, specified in the policy

policy owner, in relation to a life policy, means—

(a) the person to whom the policy is issued; or

(b) if the rights of that person under the policy have been assigned or transferred by the operation of the policy, the person who has those rights.

(2) A reference in this subpart to the **business of a statutory fund** of a life insurer is a reference to the life insurance business to which the fund relates (subject to section 118).

(3) For the purposes of this subpart—

(a) a liability (including a policy liability) is taken to be referable to the business of a statutory fund if the liability is of a kind that, under this subpart, may be discharged out of the assets of the fund; and

(b) an expense is taken to be referable to the business of a statutory fund if the expense is of a kind that, under this subpart, may be met out of the assets of the fund.

84 Duty of life insurer in relation to statutory funds

(1) In the investment, administration, and management of the assets of a statutory fund, a life insurer—

(a) must comply with this subpart; and

(b) must give priority to the interests of policy owners of life policies referable to the fund.

(2) In the event of conflict between the interests of policy owners of life policies referable to a statutory fund and the interests of shareholders or members of a life insurer, the life insurer must give priority to the interests of policy owners of those policies over the interests of shareholders or members.

(3) An act or decision of a life insurer in relation to a statutory fund does not contravene subsection (1)(b) if, having regard

to the circumstances existing at the time of the act or decision, it is reasonable to believe that the act or decision gives priority to the interests of policy owners of life policies referable to the fund.

(4) An investment by a life insurer is not ineffective merely because it is made in contravention of subsection (1)(b).

(5) A reference in subsection (1) to (3) to the interests of policy owners of life policies referable to a statutory fund is a reference to the interests of those persons viewed as a group.

(6) Nothing in subsection (1) prevents a life insurer doing anything that the life insurer is permitted by this subpart to do.

85 Notice to Bank when fund established

(1) If a life insurer establishes a statutory fund otherwise than under an approval given under section 104 or 105, the life insurer must give the Bank written notice of—

(a) the establishment of the fund; and

(b) the date on which the fund was established; and

(c) the nature of the life insurance business of the life insurer to which the fund relates; and

(d) any other prescribed matters.

(2) The notice must be given in the prescribed manner.

86 Assets of statutory fund

(1) For the purposes of this Act, the assets of a statutory fund at a particular time are the following:

(a) the balance of money represented by amounts credited to the fund in accordance with section 88:

(b) assets of the life insurer obtained as a result of the expenditure or application of money credited to the fund:

(c) investments held by the life insurer as a result of the expenditure or application of money credited to the fund:

(d) other money, assets, or investments of the life insurer transferred to the fund, whether under this subpart or otherwise.

(2) Assets or investments obtained by the application of assets (other than money) of a statutory fund are themselves assets of the fund.

(3) A life insurer must keep assets of a statutory fund distinct and separate from assets of other statutory funds and from all other money, assets, or investments of the life insurer.

(4) Nothing in this subpart is intended to constitute a life insurer or the directors of a life insurer a trustee or trustees of the assets of the statutory funds of the life insurer.

87 Identification of life policies referable to statutory fund

(1) A policy document must specify the statutory fund or statutory funds to which the life policy is referable.

(2) A policy document must not make provision inconsistent with section 81.

(3) A provision in a policy document that a life policy is referable to 2 or more statutory funds is not effective unless it specifies—

(a) the benefits under the policy that are to be provided out of each fund; and

(b) either—

(i) 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

(ii) the way in which that proportion is to be calculated.

(4) Subsection (1) does not prevent a policy document being endorsed so as to change the statutory fund or funds to which the life policy is referable.

(5) If a life policy was issued before the commencement of this section and, since that commencement, the life insurer that issued the policy has given the policy owner written notice of the statutory fund or funds to which the policy is referable, this subpart has effect as if the notice were part of the policy document relating to the policy.

88 Payments to statutory fund

The following amounts must be credited by a life insurer to a statutory fund:

(a) premiums payable under life policies referable solely to the fund:

(b) in the case of a life policy that is referable to the fund and 1 or more other statutory funds, the proportion of the premium that, by virtue of a provision in the policy document, is to be credited to the fund:

(c) amounts paid to the life insurer in relation to a liability under section 100 or 102 in relation to the fund:

(d) income from the investment of assets of the fund:

(e) money paid to or by the life insurer to the credit of the fund under a judgment of a court relating to any matter concerning the business of the fund or any failure to comply with this subpart in relation to the fund:

(f) any other money received by the life insurer in connection with its conduct of the business of the fund.

89 Capital payments to statutory funds

(1) Nothing in this subpart prevents a life insurer from making a capital payment to a statutory fund.

(2) For the purposes of this subpart, a life insurer makes a capital payment to a statutory fund if it credits to the fund an amount that—

(a) is not required to be credited to the fund; and

(b) does not represent any part of the assets of another statutory fund.

90 Expenditure and application of statutory fund

(1) A life insurer must not apply, or deal with, assets of a statutory fund, whether directly or indirectly, except in accordance with this section.

(2) The assets of a statutory fund may only be applied by the life insurer—

(a) to meet liabilities (including policy liabilities) or expenses incurred for the purposes of the business of the fund; or

(b) for the making of investments in accordance with section 95; or

(c) for the purposes of a distribution under section 113 or 114.

(3) A life insurer must not mortgage or charge any of the assets of a statutory fund except to secure a bank overdraft.

(4) A life insurer must not borrow money, for the purposes of the business of a statutory fund, by means of an unsecured borrowing if the result would be that the total amount of principal outstanding under unsecured borrowings for the purposes of the business of the fund would exceed an amount ascertained in the prescribed manner.

(5) In subsection (4), **unsecured borrowing** does not include—
- (a) a borrowing of money by means of a bank overdraft; or
- (b) a borrowing of money by means of a prescribed arrangement.

(6) The assets of a statutory fund are not available to meet a liability of a life insurer under a contract of guarantee unless—
- (a) the contract of guarantee was entered into by the life insurer in connection with an investment by the life insurer of assets of the fund; and
- (b) the investment was made in accordance with this subpart.

(7) Nothing in this section applies to the transfer of assets from one statutory fund to another in accordance with sections 104 to 106, 113, or 114.

91 Prohibition of reinsurance between funds

(1) A life insurer fails to comply with this subpart if it engages in the practice of reinsurance between statutory funds of the life insurer.

(2) For the purposes of subsection (1), the practice of reinsurance between statutory funds consists of the following elements:
- (a) part of the premium payable under a life policy referable to one statutory fund is credited to another statutory fund to which the policy is not referable (the **reinsuring fund**):
- (b) a corresponding proportion of the liability under the life policy is treated as a liability for the discharge of which the assets of the reinsuring fund are available.

92 Effect of non-compliance with section 90: general

(1) A transaction (other than a transaction to which section 93 applies) entered into in contravention of section 90 is of no effect.

(2) Subsection (1) is subject to subsection (3) and section 84(3).

(3) The High Court, on application by a party to the transaction, may make an order declaring that the transaction is effective, and is to be taken always to have been effective, for all purposes.

(4) If the High Court is satisfied that the applicant entered into the transaction in good faith and without knowledge of the contravention of section 90, the court may have regard to any hardship that would be caused to the applicant if an order were not made under subsection (3).

(5) Subsection (4) does not limit the matters to which the High Court may have regard on an application under subsection (3).

93 Effect of non-compliance with section 90: certain classes of transactions

(1) A transaction that is included in a class of transactions declared by the regulations to be transactions to which this section applies is not ineffective merely because it was entered into in contravention of section 90.

(2) The High Court, on application by the Bank, may make an order declaring that a particular transaction entered into in contravention of section 90 is, and is to be taken always to have been, of no effect for any purpose.

(3) The High Court must not make an order under subsection (2) if it is satisfied that the effect of the order (if made) would be to prejudice rights of any person in respect of, or arising out of, the transaction that have been acquired in good faith and without knowledge of the contravention.

94 Investment performance guarantee: limit of certain liabilities

(1) This section applies to a statutory fund if—

(a) the business of the fund consists of the provision of investment-linked benefits; and

(b) any of the policies referable to the fund includes an investment performance guarantee.

(2) A life insurer must at all times ensure that the investment performance guarantee factor of a statutory fund to which this section applies does not exceed 5%.

(3) The investment performance guarantee factor of a statutory fund at a particular time is the proportion of the amount of the current policy liabilities of the fund at that time that represents the total cost, as at that time, of providing the investment performance guarantees included in life policies referable to the fund.

(4) For the purposes of this section,—

(a) the amount of the current policy liabilities of a statutory fund at a particular time is the amount that, in accordance with the regulations, is to be taken to be the value, at that time, of all policy liabilities of the life insurer in relation to policies referable to the fund; and

(b) the total cost, as at a particular time, of providing the investment performance guarantees included in policies referable to a statutory fund is the amount calculated, as at that time, in accordance with the regulations.

(5) In this section,—

investment-linked benefits means benefits payable under an investment-linked contract

investment-linked contract means a contract—

(a) the principal object of which is the provision of benefits calculated by reference to units the value of which is related to the market value of a specified class or group of assets of the party by whom the benefits are to be provided; and

(b) that provides for benefits to be paid—

(i) on death; or

(ii) on a specified date or specified dates or on death before the specified date, or the last of the specified dates, as the case may be

investment performance guarantee, in relation to a life policy, means a provision that the amount payable under the policy at a particular time by way of investment-linked benefits is not less than an amount specified in, or calculated in accordance with, the policy.

95 Investment of statutory funds

(1) A life insurer may invest the assets in any way that is likely to further the business of the fund.

(2) However, subsection (1) is subject to the following qualifications:

(a) nothing in this subpart authorises a life insurer to make an investment the life insurer would otherwise be prohibited from making:

(b) nothing in this subpart authorises a life insurer to make an investment the life insurer would not otherwise have power to make:

(c) except with the approval of the Bank, a life insurer must not invest assets of a statutory fund in an associated person that is not a subsidiary of the life insurer:

(d) a life insurer must not invest assets of a statutory fund, or keep assets of a statutory fund invested, in a subsidiary of the life insurer if the investment, or the retention of the investment, as the case requires, is prohibited by the regulations.

(3) Nothing in subsection (2)(c) or (d) prevents a life insurer investing assets of a statutory fund, or keeping assets of a statutory fund invested, in ordinary voting shares of public issuers that are associated persons of the life insurer (whether or not they are subsidiaries) if the value of the assets of the fund so invested does not exceed 2.5% of the value of all assets of the fund.

(4) A transaction is not ineffective merely because it involves a contravention of subsection (2)(c) or (d).

(5) Nothing in this section—

(a) prevents a life insurer from investing money of a statutory fund by way of deposit with—

(i) a registered bank (within the meaning of the Reserve Bank of New Zealand Act 1989); or

(ii) a bank that is authorised to accept deposits under the law of an overseas jurisdiction; or

(b) requires the approval of the Bank for such an investment.

(6) For the purposes of this subpart, an investment by way of a loan is to be taken to be made when the loan agreement is entered into.

(7) In this section, **public issuer** means a person who is a party to a listing agreement with—

(a) a registered exchange (within the meaning of section 2 of the Securities Markets Act 1988); or

(b) a stock exchange in an overseas jurisdiction.

96 Recording of restricted investments

(1) A life insurer must, in the prescribed manner, keep a record of its restricted investments.

(2) In this section, **restricted investment**—

(a) means any investment of assets of a statutory fund of a life insurer in a related party; but

(b) does not include an investment of assets of a statutory fund by way of deposit with a registered bank (within the meaning of the Reserve Bank of New Zealand Act 1989), even though the bank is a related party of the life insurer concerned.

97 Transfer of assets between funds

(1) A life insurer must not transfer an asset from one statutory fund to another statutory fund except in accordance with subsection (2) or sections 104 to 106, 113, or 114.

(2) A life insurer may transfer an asset from one statutory fund (the **losing fund**) to another statutory fund (the **gaining fund**) if—

(a) the life insurer transfers from the gaining fund to the losing fund an amount equal to the fair value of the asset; and

(b) in relation to the policy owners of life policies referable to the losing fund and the gaining fund, the transfer is fair and reasonable in all the circumstances.

(3) For the purposes of subsection (2), the **fair value** of an asset is the price a person could reasonably be expected to pay for the asset on a sale in which the seller and buyer were dealing with each other at arm's length.

(4) Subsection (1) does not prevent a liquidator doing anything authorised or required by or under any enactment.

98 Restriction on restructure or termination of statutory funds

(1) A life insurer must not change the statutory fund or funds to which a life policy is referable, or terminate a statutory fund, except in accordance with sections 87(4) and 106 or section 104 or 105.

(2) Subsection (1) does not prevent a liquidator doing anything authorised or required by or under any enactment.

99 Ascertainment of income and outgoings of a statutory fund

(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations that specify—

(a) what constitutes income of a statutory fund; and

(b) what constitutes outgoings of a statutory fund.

(2) If regulations are made for the purposes of subsection (1), then, for the purposes of this subpart,—

(a) what constitutes income of a statutory fund must be determined in accordance with the regulations; and

(b) what constitutes outgoings of a statutory fund must be determined in accordance with the regulations.

Duties and liabilities of directors, etc

100 Duty of directors in relation to statutory funds

(1) A director of a life insurer has a duty to the policy owners of life policies referable to a statutory fund of the life insurer to take reasonable care, and use due diligence, to see that, in the investment, administration, and management of the assets of the fund, the life insurer—

(a) complies with this subpart; and

(b) gives priority to the interests of policy owners of life policies referable to the fund.

(2) In the event of conflict between the interests of policy owners of life policies referable to a statutory fund and the interests of shareholders or members of a life insurer, a director's duty is to take reasonable care, and use due diligence, to see that the life insurer gives priority to the interests of policy owners of those policies over the interests of shareholders or members.

(3) A reference in subsection (1) or (2) to the interests of policy owners of life policies referable to a statutory fund is a reference to the interests of those persons viewed as a group.

(4) A director of a life insurer does not commit a breach of duty because of the doing of an act by the life insurer if the life insurer is permitted by this subpart to do the act.

(5) If, in respect of any act or omission of a life insurer, a director of the life insurer has failed to comply with subsection (1) and the act or omission of the life insurer results in a loss to a statutory fund of the life insurer, the director is liable to pay the life insurer an amount equal to the amount of the loss.

(6) If 2 or more persons are liable under subsection (5) in relation to the same act or omission, the liability of those persons is joint and several.

(7) An action under subsection (5) may be brought—

(a) by the life insurer; or

(b) with the written approval of the Bank, by the policy owner of a life policy referable to the statutory fund involved.

(8) An approval under subsection (7) may be given subject to conditions relating to the persons, or the number of persons, who may join in the action as plaintiffs.

(9) A person cannot be ordered to pay an amount under this section and under section 102 in respect of the same act or omission of a life insurer.

101 Bank may give notice

(1) If a life insurer has failed to comply with this subpart, the Bank may give the life insurer a written notice requiring the life

insurer, within a specified period, to take the action that is specified in the notice to remedy the failure.

(2) The period specified in a notice must be a period ending not earlier than 1 month after the giving of the notice.

(3) The action to be specified in a notice is the action that the Bank thinks appropriate and reasonable to overcome the effects of the failure to comply.

(4) At any time before the end of the period specified in a notice, the Bank may extend the period by any further period that the Bank thinks fit.

(5) A life insurer must comply with a notice under subsection (1).

102 Liability of directors

(1) Subsection (2) applies if—

(a) the Bank has given a notice to a life insurer under section 101 in respect of a contravention of this subpart; and

(b) the contravention has resulted in a loss to a statutory fund; and

(c) the life insurer has failed to comply with the notice within the period specified in it or within that period as extended under section 101(4).

(2) The persons who were the directors of the life insurer when the contravention of this subpart occurred are jointly and severally liable to pay the life insurer an amount equal to the amount of the loss.

(3) A person is not liable under subsection (2) if the person proves that he or she used due diligence to ensure that the life insurer complied with the notice.

103 Bank's power to sue in name of life insurer

(1) If the Bank thinks that it is in the interests of the policy owners of life policies referable to a statutory fund to do so, the Bank may bring an action against a person in the name, and for the benefit, of a life insurer for the recovery of an amount that the life insurer is entitled to recover under section 102.

(2) In an action under subsection (1), the court may make any order in the matter as to costs and otherwise as it thinks fit.

Restructure and termination of statutory funds

104 Restructure of statutory funds

(1) A life insurer may apply to the Bank to restructure its statutory funds by making 1 or more life policies that are referable to a statutory fund or funds of the life insurer become referable to another statutory fund or funds of the life insurer (whether existing or proposed).

(2) If the application is approved, the restructure may take place in accordance with any conditions that the Bank may impose.

(3) The conditions may include (without limitation) conditions relating to the following:

(a) requirements to notify interested persons of the outcome of the application:

(b) matters connected with how the restructure takes place, including the following:

(i) life policies becoming referable to a receiving fund or funds:

(ii) life policy and other liabilities becoming referable to a receiving fund or funds:

(iii) assets of a transferring fund becoming assets of a receiving fund or funds:

(iv) the timing of the restructure:

(v) if a receiving fund is a proposed new statutory fund, the establishment of that fund.

(4) The Bank must not approve the application if it considers that—

(a) the restructure will result in unfairness to the policy owners of life policies referable to a transferring fund or a receiving fund when those owners are viewed as a group; or

(b) immediately after the restructure—

(i) a transferring fund will not satisfy the solvency standards; or

(ii) a receiving fund will not satisfy the solvency standards; or

(c) the life insurer is being liquidated or wound up when the application is made.

(5) In this section,—

receiving fund means the fund, or each fund, to which the life policies will become referable after a restructure

transferring fund means the fund, or each fund, to which the life policies are referable before a restructure.

105 Termination of statutory funds

(1) A life insurer may apply to the Bank to terminate 1 or more of its statutory funds.

(2) If the application is approved, the termination may take place in accordance with any conditions that the Bank may impose.

(3) The conditions may include (without limitation) conditions relating to the following:

(a) requirements to notify interested parties of the outcome of the application:

(b) matters connected with how the termination takes place, including the following:

(i) distribution or application of assets:

(ii) settling of liabilities:

(iii) the timing of the termination.

(4) The Bank must not approve the application if it considers that—

(a) the termination will result in unfairness to the policy owners of life policies referable to the fund or funds when those policy owners are viewed as a group; or

(b) the life insurer is being liquidated or wound up when the application is made.

Additional requirements for transfer of life policies between statutory funds by endorsement

106 Additional requirements for transfer of policies between statutory funds by endorsement

(1) Subsection (2) applies if—

(a) a life insurer has more than 1 statutory fund; and

(b) because of an endorsement as mentioned in section 87(4), either—

(i) a life policy has ceased to be referable to one of those funds and become referable to another fund; or

(ii) a life policy referable to 1 or more of those funds has become referable to a further fund or funds.

(2) The life insurer must transfer to each fund to which the policy has become referable assets of a value equivalent to such part of the liabilities (including policy liabilities) of the life insurer as is ascertained in the prescribed manner.

(3) If, because of an endorsement as mentioned in section 87(4), a life policy that is referable to a statutory fund becomes referable to another statutory fund, or a policy that is referable to 1 statutory fund becomes referable to 2 or more statutory funds, the life insurer concerned must give notice to the policy owner of the policy in the prescribed manner.

(4) In this section, **liabilities**, in relation to a life insurer, means—

(a) policy liabilities; and

(b) reserves; and

(c) any other liabilities of the life insurer.

Allocation of profits and losses and capital payments

107 Interpretation

(1) In sections 108 to 114,—

non-participating benefit—

(a) means a benefit that has both of the following features:

(i) the benefit does not include any entitlement to share in any distribution by the life insurer of profits or surplus:

(ii) the amount of the benefit is specified in the policy document or is to be calculated according to a formula (being a formula that is set out in the policy document and does not include any element that is in any way dependent on, or to be ascertained according to, a decision of the life insurer); and

(b) includes a benefit declared by regulations to be a non-participating benefit

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

participating benefit means any benefit other than a non-participating benefit

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

starting amount, for the purposes of a definition in this section, means the amount ascertained in accordance with regulations made for the purposes of the definition.

(2) In this subpart, **policy owners' 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

b is the total of the amounts allocated, before that time, under section 112(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 section 112(2)(a).

(3) In this subpart, **shareholders' 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

b is the total amount of capital payments allocated, before that time, under section 111(2)

c is the total of the amounts referred to in variables a and b distributed before that time.

(4) In this subpart, **shareholders' 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

b is the total of the amounts allocated, before that time, under section 112(1)(b) and (c)

c is the total of the amounts referred to in variables a and b distributed before that time

d the total of the amounts allocated, before that time, under section 112(2)(b) and (c).

(5) The categories of business of a statutory fund for the purposes of sections 108 to 114 are the participating business and non-participating business.

(6) In the application of sections 108 to 114 to a body corporate that has members but not shareholders, a reference to shareholders must be treated as a reference to members, and in the case of section 113(1), the resulting reference to members' funds must be treated as a reference to an account of the insurer representing funds that are not assets of a statutory fund.

108 Obligation to allocate operating profit or loss

If financial statements given to the Bank under section 80(1) 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.

109 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).

110 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, policy owners' retained profits; and

(c) the amount of the profit that should be treated as, or added to, shareholders' retained profits.

(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 reduction of policy owners' retained profits; and

(c) the amount representing the portion of the loss to be taken into account in reduction of shareholders' retained profits.

111 Allocation of capital

(1) A life insurer must allocate to shareholders' capital of a statutory fund all capital payments made to the fund under section 89.

(2) A life insurer allocates a capital payment by—

(a) identifying in its financial statements prepared as at the end of the period in which the payment was made the amount of the payment; and

(b) identifying that amount as an amount that should be added to shareholders' capital.

112 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, policy owners' 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' retained profits of the statutory fund:

(c) a profit of a category representing non-participating business must be treated as, or added to, shareholders' retained profits 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 lower percentage as is specified in the constitution of the insurer, may be taken into account in reduction of policy owners' 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 reduction of shareholders' retained profits of the statutory fund:

(c) a loss of a category representing non-participating business must be allocated in reduction of shareholders' retained profits of the statutory fund.

Distribution of retained profits and shareholders' capital

113 Distribution of retained profits

(1) The distribution of retained profits of a statutory fund must be in accordance with the following rules:

(a) policy owners' retained profits may only be distributed to owners of life policies that provide for participating benefits:

(b) shareholders' retained profits may be—

(i) transferred to shareholders' funds; or

(ii) transferred to another statutory fund of the insurer; or

(iii) distributed to owners of policies that provide for participating benefits.

(2) A distribution of retained profits of a statutory fund may only be made after the directors of the insurer have received the written advice of the insurer's actuary as to the likely consequences of the proposed distribution.

(3) A distribution of retained profits of a statutory fund must not be made if—

(a) the distribution would have the result that the solvency standards would not be satisfied in relation to the fund; or

(b) the distribution would involve a contravention of a direction.

(4) Solvency standards may prohibit the distribution of shareholders' retained profits unless the distribution is in accordance with specified requirements relating to the distribution of policy owners' retained profits.

114 Distribution of shareholders' capital

(1) A distribution of shareholders' 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 insurer's 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 solvency standards would not be satisfied in relation to the fund; or

(ii) the distribution would involve a contravention of a direction.

(2) Shareholders' capital may be distributed in the following ways:

(a) by transfer to shareholders' funds:

(b) by transfer to another statutory fund of the insurer:

(c) by distribution to owners of policies that provide for participating benefits.

Application of statutory fund assets

115 Application of statutory fund assets

(1) In a liquidation or other winding up of a life insurer, the assets of a statutory fund (the **primary fund**) must first be applied in discharging the following expenses, fees, and claims, in the order of priority in which they are listed:

(a) the fees and expenses properly incurred by the liquidator in carrying out the duties and exercising the powers of the liquidator, and the remuneration of the liquidator; and

(b) the reasonable costs of a person who applied to the court for an order that the insurer be put into liquidation or wound up, including the reasonable costs incurred between lawyer and client in procuring the order; and

(c) the actual out-of-pocket expenses necessarily incurred by any liquidation committee; and

(d) to any creditor who protects, preserves the value of, or recovers assets of the insurer for the benefit of the insurer's creditors by the payment of money or the giving of an indemnity,—

(i) the amount received by the liquidator by the realisation of those assets, up to the value of that creditor's unsecured debt; and

(ii) the amount of the costs incurred by that creditor in protecting, preserving the value of, or recovering those assets.

(2) In this section, **liquidator** includes a person who is occupying the position of a liquidator of the insurer by whatever name called.

(3) Subsection (1) has effect only to the extent that expenses, fees, and claims are liabilities that are referable to the business of the primary fund.

(4) If any assets remain after the application of subsection (1), the assets must be applied according to the following rules:

(a) the assets are to be applied first in discharge of policy liabilities of the life insurer referable to the primary fund:

(b) if any assets remain, they are to be applied in discharge of other liabilities that are referable to the business of the fund:

(c) if, after the application of assets according to paragraphs (a) and (b), any assets of the primary fund remain, those assets are to be applied in such manner as the High Court directs:

(d) directions given for the purpose of paragraph (c) are to be the directions that the High Court considers equitable, having regard to—

(i) the interests of the policy owners of life policies referable to the primary fund; and

(ii) the interests of the policy owners of life policies referable to statutory funds of the life insurer other than the primary fund; and

(iii) the interests of creditors of the life insurer whose debts have not been discharged by the application of assets according to paragraph (b); and

(iv) the interests of shareholders or members of the life insurer.

(5) The reference in subsection (4)(d)(iii) to creditors of a life insurer is not limited to creditors to whom amounts are due in relation to the business of a statutory fund, but includes all creditors of a life insurer, whatever the nature of the liabilities involved.

(6) If a liability of the life insurer is referable to 2 or more statutory funds or is referable in part to a statutory fund but is also related to business, other than life insurance business, carried on by the insurer, the liquidator may apportion the liability so as to determine the part of the liability that is to be borne by each of the statutory funds or by the statutory fund, as the case may be.

(7) In making an apportionment under subsection (6), the liquidator must comply with any directions of the High Court.

(8) The part of the amount so determined in relation to a statutory fund is to be treated as a liability of the life insurer that is referable to the business of the fund.

(9) This section applies despite anything to the contrary in the Companies Act 1993.

Liability of directors for loss to statutory fund

116 Liability of directors for loss to statutory fund

(1) Subsection (2) applies if—

(a) a life insurer contravenes this subpart in relation to a statutory fund; and

(b) the contravention results in a loss to the statutory fund; and

(c) the life insurer has been put into liquidation or is otherwise being wound up.

(2) The persons who were the directors of the life insurer when the contravention occurred are jointly and severally liable to pay to the insurer an amount equal to the amount of the loss.

(3) A person is not liable under subsection (2) if the person proves that he or she used due diligence to prevent the occurrence of the contravention.

(4) On application by the liquidator of the licensed insurer, the High Court may order any person liable under subsection (2) to pay to the insurer the whole or any part of the loss.

(5) A person cannot be made liable both under this section and under sections 100 to 103 in respect of the same contravention.

Offence

117 Offence to fail to comply with subpart

A life insurer commits an offence if it fails to comply with this subpart and is liable, on summary conviction, to a fine not exceeding $500,000.

Miscellaneous provisions

118 Policies that include non-life insurance business

(1) If a composite policy is not completely referable to a statutory fund under subsection (2),—

(a) this subpart applies to the composite policy only to the extent that it relates to life insurance; and

(b) for the purposes of this subpart,—

(i) to the extent that the composite policy relates to life insurance, it must be treated as being a life

policy that is separate from the parts of the composite policy that do not relate to life insurance; and

(ii) the non-life liabilities must not be treated as being policy liabilities of that life policy; and

(iii) the life insurer must fairly apportion the premium payable under the composite policy between the life insurance and other insurance so as to determine the amount or amounts that are to be credited to a statutory fund or funds; and

(iv) the life insurer must comply with any other prescribed requirements relating to how the composite policy must be treated for the purposes of this subpart.

(2) A life insurer may include composite policies as being completely referable to a statutory fund if the value of the non-life liabilities does not, at any time, exceed 5% of the value of the assets of the fund, as determined in accordance with the regulations.

(3) If, in accordance with subsection (2), composite policies are referable to a statutory fund, this subpart applies in respect of those policies, with any necessary modifications, as if—

(a) the business of the fund includes any business that relates to the insurance that is not life insurance; and

(b) the policy liabilities include the non-life liabilities.

(4) In this section,—

composite policies means life policies that, in addition to providing life insurance, also provide insurance that is not life insurance

non-life liabilities means liabilities that arise under a composite policy that relate to insurance that is not life insurance.

119 Bank may exempt overseas insurer from compliance with subpart

(1) The Bank may, by notice to an overseas insurer, exempt the insurer from compliance with this subpart.

(2) The Bank must, before granting an exemption, be satisfied that—

(a) the overseas insurer is required, under the law or other regulatory requirements of its home jurisdiction, to maintain, in respect of its life insurance business, a statutory fund or other arrangement for separating its life policy obligations from its other obligations; and

(b) there is no overseas policyholder preference in relation to payments out of, or in respect of, the statutory fund or arrangement; and

(c) the nature and extent of prudential supervision that applies in respect of the statutory fund or arrangement is, in terms of achieving the purposes of this Act, at least as satisfactory as the nature and extent of prudential supervision that applies in respect of statutory funds under this subpart.

(3) The Bank must give notice of an exemption on the Bank's Internet site.

(4) The Bank's reasons for granting an exemption (including why an exemption is appropriate) must be notified on the Bank's Internet site, together with the exemption.

(5) However, the Bank may defer notifying or not notify the reasons for granting an exemption if the Bank is satisfied on reasonable grounds that it is proper to do so on the ground of commercial confidentiality.

(6) The Bank may amend or revoke an exemption in the same way as an exemption may be granted under this section.

(7) An exemption is not a regulation for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.

Part 3
Supervision of licensed insurers

Bank to undertake prudential supervision

120 Prudential supervision

The Bank must in accordance with this Part undertake prudential supervision of licensed insurers.

Supply of information

121 Supply of information by licensed insurers for purposes of prudential supervision

(1) For the purposes of this Act, the Bank may, by notice in writing to any licensed insurer or by notice in the *Gazette* that applies to any specified class of licensed insurers, require the insurer or, as the case may be, insurers of that class to supply to the Bank any information, data, or forecasts about any matters relating to the business, operation, or management of the insurer.

(2) For the purposes of this Part, a reference to matters relating to the business, operation, or management of a person includes the corporate, financial, or prudential matters of the person.

(3) A licensed insurer may be required to supply information, data, or forecasts—

(a) relating to business carried on by the insurer in New Zealand or elsewhere (or both); and

(b) in a consolidated form (if specified by the Bank).

(4) The notice may specify—

(a) the periods for which, and the form in which, the information, data, or forecasts must be supplied; and

(b) the time by which, and the place in New Zealand at which, the information, data, or forecasts must be supplied.

(5) The Bank may, by a subsequent notice, vary, revoke, or amend a notice.

(6) A licensed insurer commits an offence if the insurer fails to comply with any requirements of the Bank under this section and is liable, on summary conviction, to a fine not exceeding $500,000.

122 Notice may require supply of information, data, or forecasts in relation to associated persons

The Bank may, by notice under section 121, require a licensed insurer, or a specified class of licensed insurers, to supply information, data, or forecasts in relation to any associated person of a licensed insurer.

123 Certain persons may be required to supply information to licensed insurers

(1) An associated person of a licensed insurer must, on being required by the insurer to do so, supply the insurer with information, data, or forecasts relating to the person in order to enable the insurer to comply with a notice under section 121.

(2) A person commits an offence if the person fails to comply with this section and is liable, on summary conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

124 Supply of information by other persons for purposes of prudential supervision

(1) If the Bank has reasonable grounds to believe that a person has information, data, or forecasts that the Bank could require a licensed insurer or a class of licensed insurers to supply under section 121, it may, by notice in writing to the person, require the person to supply the information, data, or forecasts to the Bank.

(2) The notice may specify—

(a) the periods for which, and the form in which, the information, data, or forecasts must be supplied; and

(b) the time by which, and the place in New Zealand at which, the information, data, or forecasts must be supplied.

(3) The Bank may, by a subsequent notice, vary, revoke, or amend a notice.

(4) A person commits an offence if the person fails to comply with any requirements of the Bank under this section and is liable, on summary conviction,—

(a) in the case of an individual, to a fine not exceeding $50,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000.

125 Requirement that information, data, or forecasts be audited

(1) The Bank may, by notice in writing, require a licensed insurer or other person to obtain an audit, by an auditor approved by the Bank, of any information, data, or forecasts that the insurer or other person, as the case may be, is required to supply under section 121 or 124.

(2) A licensed insurer or other person commits an offence if the insurer or person fails to comply with this section and is liable, on summary conviction,—

(a) in the case of an individual, to a fine not exceeding $50,000:

(b) in the case of a body corporate, to a fine not exceeding $100,000.

126 Bank may require report relating to licensed insurers or associated persons

(1) The Bank may, by notice in writing to a licensed insurer, require the insurer to supply the Bank with a report or series of reports, prepared by a person approved by the Bank, on any matters relating to the business, operation, or management of either or both of the following:

(a) the insurer:

(b) any associated person of the insurer.

(2) An associated person of the licensed insurer must, if required to do so by the insurer, supply information relating to the person in order to enable the insurer to comply with a notice under this section.

(3) A licensed insurer or an associated person of the insurer commits an offence if the insurer or person fails to comply with this section and is liable, on summary conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

127 Disclosure of information to Bank by auditors and actuaries

Every person who holds, or at any time has held, office as required by any enactment, as an auditor of a licensed insurer or an associated person of a licensed insurer or as the insurer's actuary, must disclose to the Bank information relating to the affairs of the insurer or associated person obtained in the course of holding that office if, in the opinion of that person,—

(a) the licensed insurer or associated person is insolvent or is likely to become insolvent or is in serious financial difficulties; and

(b) the disclosure of that information is likely to assist, or be relevant to, the exercise by the Bank of its powers under this Act.

128 Auditor or actuary to inform of intention to disclose

Every auditor or actuary must, before disclosing any information to the Bank under section 127, take reasonable steps to inform the licensed insurer or associated person of the intention to disclose the information and the nature of the information.

129 Protection of auditors and actuaries

(1) No civil, criminal, or disciplinary proceedings lie against any auditor or actuary arising from the disclosure in good faith of information to the Bank under section 127.

(2) No tribunal, body, or authority having jurisdiction in respect of the professional conduct of any auditor or actuary may make any order against, or do any act in relation to, that person in respect of such disclosure.

(3) No information received by the Bank under section 127 is admissible in evidence in any proceedings against the auditor or actuary concerned.

(4) Nothing in subsection (3) limits the admissibility of any information obtained in any other way.

Investigations

130 Investigations

(1) Subsection (2) applies if the Bank has reasonable cause to suspect that 1 or more of the following applies:

(a) a licensed insurer has failed, is failing, or is likely to fail, to maintain a solvency margin:

(b) the business of a licensed insurer has not been, or is not being, conducted in a prudent manner:

(c) a licensed insurer has been or is operating fraudulently or recklessly:

(d) a licensed insurer or an associated person has failed to comply with any requirement to supply information, data, or forecasts under this Part, or any information or data supplied by the insurer or person under this Part is false or misleading in a material particular:

(e) a licensed insurer has failed, is failing, or is likely to fail, to comply with any direction, condition, or any other requirement imposed by or under this Act or the regulations.

(2) The Bank may do either or both of the following if it considers it reasonably necessary for the purposes of carrying out its functions and exercising its powers under this Act:

(a) by notice in writing to the licensed insurer or associated person, require the insurer or person to supply to the Bank, within the time specified in the notice, the information or data specified in the notice:

(b) appoint, in writing, any suitably qualified person (an **investigator**) to carry out an investigation of the affairs of the licensed insurer or associated person.

(3) A licensed insurer or an associated person commits an offence if the insurer or person fails to comply with any requirement of the Bank under subsection (2)(a) and is liable, on summary conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

131 Power to obtain information or documents and to require answers to questions

(1) An investigator may, for the purposes of carrying out an investigation of the affairs of the licensed insurer or associated person,—

(a) by notice in writing, require the insurer or associated person, or any officer or employee of the insurer or associated person, or any other person, to—

(i) supply any information or data relating to the business, operation, or management of the insurer or associated person:

(ii) produce for inspection any documents of, or relating to, the business, operation, or management of the insurer or associated person in the custody, or under the control, of the insurer or associated person, officer, employee, or person:

(iii) if necessary, reproduce in usable form any information recorded or stored in those documents:

(b) take copies of any documents produced for inspection under paragraph (a):

(c) require any officer or employee of the insurer or associated person, or any other person, to answer any question relating to the business, operation, or management of the insurer or associated person.

(2) Any questioning under subsection (1)(c) may be carried out by the investigator, or a barrister or solicitor acting on behalf of that person, who may require the person who is subject to the questioning to take an oath or make an affirmation.

(3) An investigator who exercises any powers conferred by subsection (1) must, if requested, produce the instrument of the person's appointment.

132 Power to enter and search place

(1) An investigator may, for the purposes of carrying out an investigation of the affairs of the licensed insurer or associated person, enter and search any place if—

(a) the occupier of the place consents; or

(b) the person obtains a warrant under this section.

(2) A Judge of the High Court or a District Court Judge who is satisfied, on application in writing made on oath, that there are reasonable grounds for believing that 1 or more of the following applies may issue a warrant to an investigator:

(a) that it is reasonably necessary for the purpose of determining whether to exercise any powers conferred on the Bank under this Act that an investigation of the affairs of a licensed insurer or associated person should be carried out:

(b) that a licensed insurer or other person has failed to comply with any requirement to supply information, data, or forecasts under this Part, or any information, data, or forecasts supplied by the insurer or other person under this Part are false or misleading in a material particular:

(c) that a licensed insurer has failed, is failing, or is likely to fail, to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations.

(3) Schedule 2 applies for the purposes of this section.

133 Offences in relation to investigations

(1) Every person commits an offence who—

(a) hinders, obstructs, or delays an investigator in carrying out an investigation under this Act; or

(b) refuses to answer any question put to him or her under section 131; or

(c) fails to comply with any lawful requirement of an investigator.

(2) A person who commits an offence under this section is liable, on summary conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

134 Effect of proceedings

(1) If a person commences any proceedings in any court in respect of the exercise of any powers conferred by sections 130 to

132, until a final decision in relation to those proceedings is given, the powers may be, or may continue to be, exercised as if those proceedings had not been commenced, and no person is excused from fulfilling any obligation under those sections by reason of those proceedings.

(2) This section applies despite the provisions of any other Act or any rule of law.

135 Effect of final decision that exercise of powers under section 130 and 131 unlawful

In any case where it is declared in a final decision given in any proceedings in respect of the exercise of powers conferred by sections 130 and 131 that the exercise of any powers conferred by those sections is unlawful, to the extent to which the exercise of those powers is declared unlawful,—

(a) the Bank must ensure that as soon as is reasonably practicable after the decision of the court is given—

(i) any information and data supplied by the licensed insurer or person under section 130(2)(a) or 131(1)(a) is destroyed:

(ii) any documents or extracts from documents obtained pursuant to an inspection made under section 131(1)(a) are returned to the person previously having possession of those documents or previously having them under his or her control and any copies of those documents or extracts are destroyed:

(iii) any information derived from or based upon any such information and data or documents or extracts is destroyed:

(b) no information or data supplied by the licensed insurer or person under section 130(2)(a) or 131(1)(a), and no documents or extracts from documents obtained under section 131(1)(a),—

(i) are admissible in evidence in any proceedings:

(ii) may be used in connection with the exercise of any power conferred by Part 4 or 5.

Miscellaneous provisions

136 Confidentiality of information

(1) This section applies to—

(a) information, data, and forecasts supplied or disclosed to, or obtained by, the following under, or for the purposes of, or in connection with the exercise of powers conferred by, this Act:

(i) the Bank; or

(ii) an investigator:

(b) information and data derived from or based upon information, data, and forecasts referred to in paragraph (a):

(c) information relating to the exercise, or possible exercise, of the powers conferred by this Act.

(2) The Bank may publish or disclose any information or data to which this section applies only if—

(a) the information or data is available to the public under any Act or is otherwise publicly available information; or

(b) the information or data is in a statistical or summary form; or

(c) the publication or disclosure of the information or data is for the purposes of, or in connection with, the exercise of powers conferred by this Act or any other enactment; or

(d) the publication or disclosure of the information or data is to any authority or body in any other country that exercises functions that correspond with, or are similar to, those conferred on the Bank under this Act, and the Bank is satisfied that the information or data will only be used by that authority or body for the purpose of exercising those functions; or

(e) the publication or disclosure of the information or data is to any person who the Bank is satisfied has a proper interest in receiving the information; or

(f) the publication or disclosure of the information or data is with the consent of the person to whom the information relates or of the person to whom the information is confidential.

(3) The Bank must not publish or disclose information or data under subsection (2)(d) or (e) unless the Bank is satisfied that satisfactory provision exists to protect the confidentiality of that information or data.

(4) An officer or employee of the Bank must not publish or disclose any information or data to which this section applies except for the purposes of, or in connection with, the exercise of powers conferred by this Act or any other enactment.

(5) An officer or employee of the Bank commits an offence if the officer or employee fails to comply with this section and is liable, on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both).

137 Limits on further disclosure of information

(1) A person to whom any information or data is published or disclosed under section 136(2)(c), (e), or (f) must not publish, disclose, or use that information or data unless the publication, disclosure, or use is,—

(a) in the case of a publication or disclosure under section 136(2)(c),—

(i) for the purposes of, or in connection with, the exercise of powers conferred by this Act or any other enactment; and

(ii) in accordance with any conditions that may be imposed by the Bank:

(b) in the case of a publication or disclosure under section 136(2)(e),—

(i) authorised by the Bank and in accordance with any conditions that the Bank may have imposed; or

(ii) necessary or desirable for the exercise of any function or power conferred by any enactment:

(c) in the case of a publication or disclosure under section 136(2)(f), in accordance with the terms and conditions of the consent referred to in that paragraph.

(2) A person commits an offence if the person fails to comply with this section and is liable, on summary conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

138 Application of other enactments to information published or disclosed under section 136

Nothing in any Act, other than this Act or the Official Information Act 1982, requires the Bank or any person to whom information or data has been published or disclosed under section 136 to make that information or data available to any other person.

Part 4
Distress management

Subpart 1—Recovery plans

139 Bank may require licensed insurer to prepare recovery plan

(1) The Bank may give a licensed insurer a written direction to prepare a recovery plan if it has reasonable grounds to believe that 1 or more of the following applies:

(a) the insurer has failed, is failing, or is likely to fail, to maintain a solvency margin:

(b) the business of the insurer has not been, or is not being, conducted in a prudent manner:

(c) the insurer has failed, is failing, or is likely to fail, to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations.

(2) The recovery plan must—

(a) be in writing; and

(b) set out the actions that the licensed insurer will take to effectively address the matters that caused the Bank to give the direction and, in particular, to ensure that (as the case may be)—

(i) the insurer maintains its solvency margin and, in the case of a life insurer, the insurer also main-

tains the solvency margin or margins that apply in respect of its statutory funds:

(ii) the business of the insurer is conducted in a prudent manner:

(iii) the insurer comes back into compliance, or remains compliant with, any direction, condition, or other requirement referred to in subsection (1)(c); and

(c) set out an appropriate timetable for taking those actions to ensure that those actions are taken as soon as practicable; and

(d) describe the steps that the licensed insurer will take to ensure that the plan remains current, which must include procedures for regular review of the plan to systematically identify deficiencies in the effectiveness of the plan; and

(e) be appropriate to the operations of the licensed insurer, having regard to the size of the insurer, its corporate structure (including its relationship with associated persons), its funding structure, the market sector in which it operates, and its business strategy; and

(f) otherwise be prepared within the time and in the manner specified by the Bank in the direction; and

(g) be approved by the licensed insurer's governing body within the time specified by the Bank in the direction.

(3) The Bank may require the recovery plan to specify a final date by which all of the actions referred to in subsection (2)(b) must have been taken and the outcome in subsection (2)(b)(i), (ii), or (iii) achieved.

140 Recovery plan must be provided to Bank for approval

(1) The licensed insurer must, within the time specified by the Bank, provide a copy of the recovery plan to the Bank.

(2) The Bank must, after receiving the copy, inform the licensed insurer whether the Bank is satisfied that the plan meets the requirements in section 139(2) and (3).

(3) If the Bank is not satisfied that the recovery plan meets the requirements in section 139(2) and (3),—

(a) the Bank may require the licensed insurer to amend the plan and to resubmit the plan to the Bank for approval within any reasonable time that the Bank may specify; and

(b) the licensed insurer must comply with those requirements.

141 Licensed insurer must comply with recovery plan

The licensed insurer must, after the recovery plan has been approved by the Bank, take all practicable steps to comply with the plan.

142 Amendments to recovery plan

(1) A licensed insurer may amend its recovery plan only with the Bank's approval.

(2) If, at any time, the Bank is no longer satisfied that the recovery plan meets the requirements in section 139(2) and (3)—

(a) the Bank may require the licensed insurer to amend the plan in the manner specified by the Bank and to resubmit the plan to the Bank for approval within any reasonable time that the Bank may specify; and

(b) the licensed insurer must comply with those requirements.

143 Offence to fail to comply with recovery plan requirements

A licensed insurer commits an offence if it fails to comply with any of sections 139 to 142 and is liable, on summary conviction, to a fine not exceeding $500,000.

Subpart 2—Directions to insurers and associated persons

144 Bank may give directions to licensed insurer

(1) The Bank may give a licensed insurer a direction, in writing, if it has reasonable grounds to believe that 1 or more of the following apply:

(a) the insurer has failed, is failing, or is likely to fail, to maintain a solvency margin:

(b) the business of the insurer has not been, or is not being, conducted in a prudent manner:

(c) the insurer, or a director or relevant officer, has failed, is failing, or is likely to fail, to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations:

(d) the governance structure of the insurer has changed since its licence was issued in a manner that significantly reduces the extent to which it is appropriate (having regard to the matters specified in section 18(1)(h)):

(e) the insurer is an overseas insurer and an overseas supervisor has taken, or is taking, regulatory action against the insurer (whether or not that action has been completed):

(f) the insurer is an overseas insurer and the law, requirements, or supervision referred to in section 18(1)(i) has changed since its licence was issued in a manner that significantly reduces the extent to which that law, those requirements, or that supervision is appropriate (having regard to the matters specified in that paragraph).

(2) In this section, **regulatory action** means—

(a) action to cancel or suspend the licence, registration, or other authorisation of the insurer to act as an insurer (or action equivalent to cancelling or suspending such a licence, registration, or authorisation); or

(b) a direction to the insurer to the effect of 1 or more of the following:

(i) to take specified action to improve its solvency:

(ii) to cease to enter into new contracts of insurance:

(iii) to carry on its business, or any part of its business, in accordance with the direction:

(iv) to cease to carry on its business, or any part of its business, in accordance with the direction; or

(c) removing or replacing any directors or relevant officers of the insurer (whether by means of a direction or otherwise):

(d) civil or criminal proceedings against the insurer.

145 Scope of directions to licensed insurer

(1) A direction given under section 144 may require a licensed insurer to—

(a) consult with the Bank, at the times and in the manner specified by the Bank, about the circumstances of the insurer and the actions or proposed actions of the insurer in respect of resolving any difficulties facing the insurer:

(b) cease entering into any new contracts of insurance (subject to subsection (2)):

(c) carry on its business, or any part of its business, in accordance with the direction:

(d) cease to carry on its business, or any part of its business, in accordance with the direction:

(e) take the action that is specified in the direction to address a failure, or potential failure, to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations:

(f) ensure that any officer or employee of the insurer ceases to take part in the management or conduct of its business except with the permission of the Bank and so far as that permission extends:

(g) take the action that is specified in the direction to address any circumstances of financial difficulties.

(2) A direction must not require the licensed insurer to cease to enter into contracts of insurance by way of renewal of contracts of insurance that were originally entered into before the direction was given.

146 Bank may give directions to associated person

The Bank may give an associated person of a licensed insurer a written direction if it has reasonable grounds to believe that 1 or more of the following apply:

(a) the associated person, or a director or the chief executive officer of the associated person, has failed, is failing, or is likely to fail, to comply with any direction or other requirement imposed by or under this Act or the regulations:

(b) the circumstances of the associated person are such as to be prejudicial to the solvency of the insurer or its ability to comply with this Act or the regulations:

(c) the affairs of the associated person are being conducted in a manner prejudicial to the solvency of the insurer or its ability to comply with this Act or the regulations.

147 Scope of directions to associated person

A direction given under section 146 may require an associated person to—

(a) consult with the Bank, at the times and in the manner specified by the Bank, about the circumstances of the associated person and the actions or proposed actions of the associated person in respect of resolving any difficulties facing the associated person:

(b) take the action that is specified in the direction to address a failure, or potential failure, to comply with any direction or other requirement imposed by or under the Act or the regulations:

(c) ensure that any officer or employee of the associated person ceases to take part in the management or conduct of its business except with the permission of the Bank and so far as that permission extends:

(d) take the action that is specified in the direction to address any circumstances of financial difficulties.

148 Miscellaneous matters relating to directions

(1) The Bank must obtain the consent of the Minister before giving a direction under this subpart.

(2) A direction given under this subpart must state the grounds on which it is given.

(3) The Bank may, with the consent of the Minister,—

(a) amend or modify a direction; or

(b) replace a direction with another direction; or

(c) revoke a direction.

149 Offence to contravene directions

(1) A licensed insurer, or an associated person of a licensed insurer, that fails to comply with a direction under this subpart commits an offence.

(2) Every person commits an offence who, being an officer or employee of a licensed insurer or of an associated person of a licensed insurer, obstructs, hinders or prevents the insurer or associated person from giving effect to a direction under this subpart.

(3) Every person who commits an offence under this section is liable on summary conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

150 Power to remove, replace, or appoint directors, auditor, or actuary

(1) This section applies if the Bank has reasonable grounds to believe that—

(a) any of the circumstances referred to in section 144(1) or 146 exists; and

(b) it is necessary to—

(i) remove or replace a director, auditor, or actuary of a licensed insurer or of an associated person of a licensed insurer; or

(ii) appoint a person as a director, auditor, or actuary of a licensed insurer or of an associated person of a licensed insurer.

(2) If this section applies, the Bank may—

(a) remove or replace a director, auditor, or actuary of a licensed insurer or of an associated person of a licensed insurer; or

(b) appoint a person as a director, auditor, or actuary of a licensed insurer or of an associated person of a licensed insurer.

(3) The Bank must—

(a) obtain the consent of the Minister before exercising the power conferred by this section; and

(b) exercise that power by giving notice in writing to—

(i) the director, auditor, or actuary or the person concerned; and

(ii) in the case of a director, the Registrar of Companies; and

(c) give notice in writing of the exercise of that power to the licensed insurer.

(4) A notice given under subsection (3)(b)(ii) is sufficient compliance with section 159 of the Companies Act 1993 as long as the notice is accompanied by the form of consent and certificate required under section 152 of that Act.

(5) This section does not apply in respect of a director of an overseas person.

(6) This section has effect despite any enactment, rule of law, or the terms of the constitution of a licensed insurer or an associated person of a licensed insurer.

151 Offence to disclose giving of direction or notice

(1) Every person commits an offence who discloses that a direction has been given under subpart 1 or this subpart or that a notice has been given under section 150.

(2) Nothing in subsection (1) applies to the disclosure or publication of the fact that a direction or notice has been given if the disclosure or publication is made—

(a) to any professional or financial adviser of the licensed insurer or associated person of a licensed insurer to which the direction or notice relates:

(b) with the written consent of the Bank, for the purposes of the sale or other disposition, or the possible sale or other disposition, of the whole or any part of the capital, or business undertaking, of the licensed insurer or associated person of a licensed insurer:

(c) by the Bank or with the written consent of the Bank,—

(i) to the public; or

(ii) to any person who has a proper interest in knowing that the direction or notice has been given.

(3) Nothing in subsection (1) applies to the disclosure or publication of the fact that a direction has been given requiring the actions set out in section 145(1)(f) or 147(c) for the purpose of giving effect to that direction.

(4) Every person who commits an offence under this section is liable on summary conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $500,000.

Subpart 3—Liquidation or voluntary administration of licensed insurers

Bank may apply to put insurer into liquidation or voluntary administration, or apply for reduction of value of contracts of insurance

152 Bank may apply for liquidation of insurers

(1) The Bank may, in the case of a licensed insurer that may be put into liquidation under or in accordance with the Companies Act 1993, apply to the High Court to appoint a liquidator for the licensed insurer.

(2) The High Court may, on an application under subsection (1), appoint a liquidator for the licensed insurer if it is satisfied that—

(a) the insurer is unable to pay its debts (and, for that purpose, section 287 of the Companies Act 1993 applies with all necessary modifications whether or not the insurer is a company); or

(b) the insurer is failing to maintain a solvency margin; or

(c) the insurer, or a director or relevant officer, has persistently or seriously failed to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations; or

(d) it is just and equitable that the insurer be put into liquidation.

(3) The High Court may, on the application of the Bank, appoint a liquidator for a body corporate that may be put into liquid-

ation under or in accordance with the Companies Act 1993 if it is satisfied that the body corporate is carrying on insurance business in New Zealand without holding a licence in breach of section 13.

(4) Subsection (3) does not limit subsections (1) and (2).

(5) Nothing in this section limits or affects any other enactment that provides for the winding up, liquidation, or dissolution, of any body corporate or any class of body corporate.

153 Bank may apply for High Court to reduce value of contracts of insurance

(1) The High Court may, on the application of the Bank, reduce the value of 1 or more of a licensed insurer's contracts of insurance if it is satisfied that 1 or more of the grounds specified in section 152(2)(a) to (d) apply.

(2) The High Court may order a reduction under this section on the terms and subject to the conditions (if any) that it thinks fit.

(3) The High Court may, for the purposes of this section, order the Bank to arrange for an independent actuary to prepare a report on the matters that the court thinks fit.

154 Bank may apply for voluntary administration of licensed insurers

The Bank may apply under section 239L of the Companies Act 1993 for the appointment of an administrator for a licensed insurer that is a company.

Bank's approval for voluntary liquidation or appointment of administrator by company

155 Bank's approval for voluntary liquidation or appointment of administrator by company

(1) A liquidator may not be appointed under section 241(2)(a) or (b) of the Companies Act 1993 for a licensed insurer unless—

(a) a copy of the special resolution referred to in section 241(2)(a) is given to the Bank or the Bank is notified of the occurrence of the event referred to in section 241(2)(b) (as the case may be); and

(b) the Bank has given its written approval to the appointment.

(2) An administrator may not be appointed under section 239I of the Companies Act 1993 for a licensed insurer unless—

(a) a copy of the resolution referred to in section 239I(1)(a) is given to the Bank; and

(b) the Bank has given its written approval to the appointment.

(3) An appointment made in breach of subsection (1) or (2) is not valid.

(4) A request for the Bank to give its approval under this section must—

(a) be made in the manner that is specified by the Bank; and

(b) be accompanied by the prescribed fee (if any).

(5) A person that makes a request must provide to the Bank the information that is required by the Bank to assist it in determining whether to give its approval.

Bank's participation in insolvency procedures and certain other proceedings

156 Bank may make certain applications in respect of voluntary administration or liquidation and appear and be heard in proceedings

(1) If any person other than the Bank makes an application to the High Court to appoint a liquidator for a licensed insurer or otherwise for the winding up or dissolution of the insurer or for the appointment of an administrator for the insurer, the Bank may appear and be heard in relation to the application.

(2) If a licensed insurer is in voluntary administration or is in liquidation under Part 16 of the Companies Act 1993,—

(a) the Bank may make an application under any of sections 239AM, 239ADB, 239ADD, 239ADO, 239ADP, 239ADQ, 239ADS, 239ADT, 239ADU, 239ADV, 239AER, 239AEU, 245A, 250, 271, 284, and 286 of that Act in respect of the insurer (and those sections apply, with all necessary modifications, as if the references to the persons who may make an application

under those sections include a reference to the Bank); and

(b) the Bank may appear and be heard in relation to an application made by any other person under any of those sections in respect of the insurer.

(3) If a person makes an application under section 239ADR of the Companies Act 1993 in respect of a licensed insurer, the Bank may appear and be heard in relation to the application.

157 Bank's participation in arrangements, amalgamations, and compromises under Companies Act 1993

(1) If a compromise under section 228(1) of the Companies Act 1993 has been proposed in respect of a licensed insurer, the insurer must send to the Bank a copy of the notice, statement, and lists referred to in section 229(2) of that Act as soon as practicable after those documents are delivered for registration under that subsection.

(2) A licensed insurer who fails to comply with subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding $100,000.

(3) If a person makes an application under section 232 or 236 of the Companies Act 1993 in respect of a licensed insurer, the Bank may appear and be heard in relation to the application.

158 Bank must be sent copy of applications under Parts 14 to 16 of Companies Act 1993

(1) If a person (other than the Bank) makes an application to the High Court under any provision of Parts 14 to 16 of the Companies Act 1993 in respect of a licensed insurer, each of the following persons must take reasonable steps to ensure that a copy of the application (together with any reports or other documents that are filed in the court in respect of the application) is sent to the Bank as soon as practicable:

(a) the insurer (unless it is in voluntary administration or liquidation or is subject to a deed of company arrangement):

(b) if the insurer is in voluntary administration or liquidation or subject to a deed of company arrangement, the

administrator, liquidator, or deed administrator (as the case may be):

(c) the Registrar of the High Court in which the application is made.

(2) A licensed insurer commits an offence if it fails to comply with subsection (1) and is liable, on summary conviction, to a fine not exceeding $100,000.

159 Bank must be sent copies of certain documents and may inspect certain accounts and records

(1) If a person is required to prepare a specified document in respect of a licensed insurer under any of sections 239AH, 239AI, 239ACP(1)(a), 239ACZ, 239ADY(a) and (c), 239ADZ, 239AEA, or 257(1)(a)(i) or (ii) of the Companies Act 1993, the person must send a copy of the document to the Bank as soon as practicable after it has been prepared.

(2) In subsection (1),—

prepare, in respect of a specified document, includes to lodge, file, or make the document

specified document means a report, an account, a deed, a notice, or a statement.

(3) The Bank may inspect any accounts or records kept by a liquidator of a licensed insurer under section 256(1)(a) of the Companies Act 1993.

160 Attendance of representative of Bank at certain meetings for insurer in voluntary administration, that is subject to deed of company arrangement, or in liquidation

(1) This section applies in respect of a licensed insurer that is—

(a) in voluntary administration; or

(b) subject to a deed of company arrangement; or

(c) in liquidation under Part 16 of the Companies Act 1993.

(2) The convenor of a specified meeting must ensure that—

(a) the Bank receives the notices and communications relating to the meeting that a person who is entitled to attend the meeting is entitled to receive; and

(b) a representative of the Bank—

(i) is permitted to attend the meeting; and

(ii) may be heard at the meeting.

(3) In this section,—

convenor, in relation to a specified meeting, means an administrator, a deed administrator, a liquidator, or any other person that convenes, calls, or summons the meeting

specified meeting—

(a) means a meeting convened, called, or summoned under any of the following provisions of the Companies Act 1993:

(i) in the case of a licensed insurer in voluntary administration, section 239T, any provision of subparts 6 to 8 of Part 15A, and section 239ADF:

(ii) in the case of a licensed insurer in liquidation, sections 243, 244, 258(2)(b) and (d), 314, and 315; and

(b) includes—

(i) a meeting of a creditors' committee (within the meaning of section 239AR of the Companies Act 1993):

(ii) a meeting called as a result of a request under section 161.

161 Bank may require meeting of creditors or shareholders to appoint liquidation committee

(1) This section applies in respect of a licensed insurer that is in liquidation under Part 16 of the Companies Act 1993.

(2) At any time in the course of the liquidation, the Bank may, by notice in writing to the liquidator, require the liquidator to call a meeting of creditors or shareholders—

(a) to vote on a proposal that a liquidation committee for the purposes of section 315 of the Companies Act 1993 be appointed to act with the liquidator; and

(b) if it is so decided, to choose the members of the committee.

(3) The liquidator must comply with the requirement and section 314(4) to (6) of the Companies Act 1993 apply, with all necessary modifications, for the purposes of this section (except

section 314(4) is not subject to subsections (2) and (3) of that section).

Special insolvency provisions for insurers

162 High Court may reduce value of contracts of insurance

(1) If an application has been made to the High Court to appoint a liquidator or an administrator for a licensed insurer, the court may, if it thinks fit, reduce the value of 1 or more of the insurer's contracts of insurance instead of appointing the administrator or liquidator.

(2) The High Court may if it thinks fit, on the application of a liquidator or an administrator of a licensed insurer, reduce the value of 1 or more of the insurer's contracts of insurance.

(3) The High Court may order a reduction under this section on the terms and subject to the conditions (if any) that it thinks fit.

(4) A liquidator or an administrator who makes an application under subsection (2) must provide a copy of the application to the Bank as soon as practicable after it is filed.

(5) The Bank is entitled to attend and be heard in any proceedings under this section.

163 High Court may require actuarial report

(1) The High Court may, for the purposes of section 162, order a licensed insurer, a liquidator, an administrator, or another person that is a party to the proceedings to arrange for an independent actuary to prepare a report on the matters that the court thinks fit, and to make any order in the matter as to costs and otherwise as it thinks fit.

(2) The person that arranges for an independent actuary to prepare the report must ensure that a copy is provided to the Bank as soon as practicable after it is prepared.

164 Continuation of life policies if insurer in liquidation

(1) This section applies in relation to the liquidation of a life insurer under Part 16 of the Companies Act 1993.

(2) The liquidator must carry on the life insurer's business so far as it consists of continuing the insurer's life policies with a view

to that part of the business being transferred as a going concern to a person who may lawfully continue those life policies.

(3) Subsection (2) applies unless the High Court orders otherwise.

(4) In continuing the business, the liquidator—

(a) may agree to the variation of any life policies in existence when the liquidator is appointed; but

(b) must not enter into any new life policies.

(5) The High Court may, on the application of the Bank or a liquidator, appoint an independent actuary to investigate the licensed insurer's business so far as it consists of continuing its life policies and to report to the Bank and liquidator—

(a) on the desirability or otherwise of that part of the insurer's business being continued; and

(b) on any reduction in the life policies effected by the insurer that may be necessary for successful continuation of that part of the insurer's business.

(6) Nothing in Schedule 6 of the Companies Act 1993 limits this section.

165 Liquidator or deed administrator may apply to High Court for approval of scheme of transfer of insurance business

(1) The liquidator or deed administrator of a licensed insurer may apply to the High Court for approval of a scheme under which all or part of the insurer's insurance business is transferred to another person (the **transferee**).

(2) An application under subsection (1) must contain, or be accompanied by, a scheme for the proposed transfer that sets out—

(a) the contracts of insurance in respect of which liability is to be assumed by the transferee (including a description of each class of contract that is sufficient to identify it, and the amount of the liability in respect of each class); and

(b) the assets that are to be transferred to the transferee in consideration for the assumption of that liability; and

(c) the net value of those assets; and

(d) the terms of the agreement or deed under which the proposed transfer is to be carried out; and

(e) particulars of any other arrangements necessary to give effect to the scheme.

(3) The following reports must be provided to the High Court in respect of an application under subsection (1):

(a) a report on the scheme prepared by the Bank that contains the matters required by the High Court and any other matters that the Bank thinks fit; and

(b) an independent actuary's report on the scheme obtained by the Bank that contains the matters required by the High Court and any other matters that the Bank thinks fit.

(4) The licensed insurer is liable to pay to the Bank the costs incurred by the Bank in obtaining the actuary's report under subsection (3)(b) (and the amount payable is recoverable as a debt due to the Bank in any court of competent jurisdiction).

166 Right to attend and be heard

(1) If an application is made under section 165, the liquidator or deed administrator must, as soon as practicable after it is filed, serve notice of the application on each of the following:

(a) the Bank:

(b) the transferee:

(c) the person appointed by the High Court to represent the policyholders of the licensed insurer or any class of those policyholders:

(d) the person appointed by the High Court to represent the shareholders or members of the licensed insurer or any class of those shareholders or members:

(e) the person appointed by the High Court to represent the creditors of the licensed insurer or any class of those creditors.

(2) The following persons are entitled to appear and be heard on the application:

(a) each person to whom notice of the application has been sent under subsection (1):

(b) with the leave of the High Court, any other person who appears to the court to have a sufficient interest in the application.

(3) In respect of a proceeding or intended proceeding under section 165, the High Court may, on an application by the liquidator, deed administrator, or the Bank, or on its own initiative, appoint persons for the purposes of subsection (1)(c) to (e).

167 Approval of scheme

(1) The High Court may—

(a) approve the scheme without modification; or

(b) approve the scheme subject to the modifications that it thinks fit (subject to the agreement of the liquidator or deed administrator, the Bank, and the transferee); or

(c) refuse to approve the scheme.

(2) In deciding whether to approve a scheme (with or without modifications), the High Court must have regard to—

(a) the interests of the policyholders, shareholders or members, and creditors of the licensed insurer who are affected by the scheme; and

(b) the reports referred to in section 165(3); and

(c) any other matter the court considers relevant.

168 Effect of approval

When a scheme is approved—

(a) it becomes binding on all persons; and

(b) it has effect in spite of anything in the constitution of any licensed insurer affected by the scheme; and

(c) the liquidator or deed administrator must send a copy of the scheme to the Bank.

169 Application by Bank for directions to liquidator, administrator, or deed administrator

(1) The Bank may apply to the High Court for the court to give directions to the liquidator, administrator, or deed administrator of a licensed insurer relating to the performance or exercise of any of the liquidator's, administrator's, or deed administrator's functions or powers.

(2) On an application under subsection (1), the High Court may give directions concerning the performance or exercise of any of the liquidator's, administrator's, or deed administrator's functions or powers, and every person is bound by those directions.

(3) The liquidator, administrator, or deed administrator is entitled to appear and be heard on the application.

170 Valuation of policies by liquidator or deed administrator

(1) The liquidator of a licensed insurer must determine the amount of the liability of the insurer to each policyholder under each contract of insurance entered into in New Zealand by the insurer in the manner and on the basis that the liquidator decides.

(2) A deed administrator of a licensed insurer may determine the amount of the liability of the insurer to each policyholder under each contract of insurance entered into in New Zealand by the insurer in the manner and on the basis that the deed administrator decides.

(3) The liquidator or deed administrator (if the deed administrator acts under subsection (2)) must give to each policyholder notice in writing of the amount of the liability under the policyholder's contract of insurance as determined under subsection (1) or (2).

(4) The amount of the liability of the licensed insurer, as determined by the liquidator or deed administrator under subsection (1) or (2), is binding upon each policyholder to whom notice is given under subsection (3), unless, within 2 months after the date the notice was given, that person appeals to the High Court against the liquidator's or deed administrator's determination.

(5) On an appeal to the High Court against the liquidator's or deed administrator's determination, the High Court may confirm, reverse, or modify the determination appealed against and may make any other order that it thinks fit.

Subpart 4—Statutory management

Commencement of statutory management

171 Statutory management of licensed insurers and associated persons

(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank,—

(a) declare that a licensed insurer is subject to statutory management; and

(b) declare that an associated person of a licensed insurer is subject to statutory management; and

(c) appoint 1 or more persons as statutory manager or statutory managers of the licensed insurer or associated person for a specified period.

(2) If an Order in Council is made under subsection (1),—

(a) every subsidiary of a licensed insurer declared to be subject to statutory management, except any subsidiary declared to be a subsidiary to which the order does not apply, is subject to statutory management; and

(b) the appointment of a statutory manager for the specified period in respect of the licensed insurer also applies to those subsidiaries.

(3) If a licensed insurer acquires a subsidiary after it has been declared to be subject to statutory management under subsection (1), the subsidiary is not subject to statutory management unless a further Order in Council is made declaring the subsidiary to be subject to statutory management.

172 Statutory management of overseas persons

If a licensed insurer or an associated person of a licensed insurer that is declared to be subject to statutory management, or a subsidiary of a licensed insurer that becomes subject to statutory management under section 171(2) or (3), is an overseas person, the provisions of this subpart apply to the property, rights, assets, and liabilities relating to its New Zealand business.

173 Date and time of appointment

(1) Every Order in Council made under section 171(1) must specify the date on which, and the time at which, the Order in Council comes into force.

(2) The date and time as specified must not be earlier than the date on which, and the time at which, the Order in Council is made.

(3) If a question arises as to whether, on the date on which a statutory manager was appointed, an act was done or a transaction was entered into or effected before or after the appointment, the act or transaction must, in the absence of proof to the contrary, be treated as having been done, entered into, or effected, as the case may be, after the appointment of the statutory manager.

174 Grounds on which licensed insurer may be declared to be subject to statutory management

(1) The Bank may make a recommendation under section 171 in respect of a licensed insurer only if it is satisfied on reasonable grounds—

(a) that 1 or more of the circumstances specified in section 144(1)(a) to (f) apply and the failure of the insurer may cause significant damage to the financial system or the economy of New Zealand (or both); or

(b) that the insurer is, or may be, operating fraudulently or recklessly, and that it is desirable that the insurer be declared to be subject to statutory management for the purpose of—

(i) limiting or preventing the risk of further deterioration of the financial affairs of the insurer; or

(ii) limiting or preventing the carrying out, or the effects, of any fraudulent act or activity; or

(iii) enabling the affairs of the insurer to be dealt with in a more orderly or expeditious way.

(2) However, the Bank must not make a recommendation under section 171 in respect of a licensed insurer unless it is satisfied on reasonable grounds that the public interest, the financial system or economy of New Zealand, or the policyholders of the insurer cannot be adequately protected under the provi-

sions of this Act other than this subpart or under the Companies Act 1993.

175 Grounds on which associated person can be declared to be subject to statutory management

(1) The Bank may make a recommendation under section 171 in respect of an associated person of a licensed insurer if it is satisfied on reasonable grounds—

(a) that 1 or more of the circumstances specified in section 146(a) to (c) apply; or

(b) that the business and affairs of the licensed insurer are so closely connected with the associated person that the statutory manager would be unable to exercise effectively the powers conferred by this subpart in relation to the insurer unless the statutory manager is appointed as statutory manager of the associated person; or

(c) that the associated person is, or may be, operating fraudulently or recklessly in a manner prejudicial to the solvency of the insurer or its ability to comply with this Act or the regulations, and that it is desirable that the person be declared to be subject to statutory management for the purpose of—

(i) limiting or preventing the risk of further deterioration of the financial affairs of the person; or

(ii) limiting or preventing the carrying out, or the effects, of any fraudulent act or activity; or

(iii) enabling the affairs of the person to be dealt with in a more orderly or expeditious way.

(2) However, the Bank must not make a recommendation under section 171 in respect of an associated person of a licensed insurer unless it is satisfied on reasonable grounds that the public interest, the financial system or economy of New Zealand, or any policyholders of the person cannot be adequately protected under the provisions of this Act other than this subpart or under the Companies Act 1993.

(3) If an associated person of a licensed insurer is also a licensed insurer, the Bank may make a recommendation under section 171 in respect of the person on any of the grounds in subsection (1) or section 174.

(4) Section 174 does not limit subsection (3).

176 Bank must give notice of recommendation

The Bank must, as soon as practicable after the making of an Order in Council under section 171 declaring a licensed insurer or an associated person of a licensed insurer to be subject to statutory management, give written notice to the insurer or associated person stating the grounds on which the Bank's recommendation was made.

177 Application of this subpart to joint statutory managers, associated persons, and subsidiaries

(1) If an Order in Council is made under section 171 appointing 2 or more persons as statutory managers of a licensed insurer, the order must state whether the powers conferred by this subpart must be exercised by those persons acting together or may be exercised individually.

(2) For the purposes of this subpart, unless the context otherwise requires,—

(a) references to a statutory manager, if 2 or more persons are appointed as statutory managers, include references to those statutory managers:

(b) if an associated person of a licensed insurer is declared to be subject to statutory management, or a subsidiary of a licensed insurer becomes subject to statutory management under section 171(2) or (3),—

(i) references to a licensed insurer in this subpart must be read as including references to the associated person or subsidiary, as the case may be; and

(ii) references to a corporation in the provisions of the Corporations (Investigation and Management) Act 1989 (as applied by section 181) must be read as including references to the associated person or subsidiary, as the case may be.

178 Continuation of statutory management of companies restored to New Zealand register

(1) This section applies to a licensed insurer, an associated person of a licensed insurer, or a subsidiary of a licensed insurer, that has been removed from the New Zealand register under section 317 of the Companies Act 1993 while subject to statutory management.

(2) If a person to whom this section applies is restored to the New Zealand register under section 328 of the Companies Act 1993, the person continues to be subject to statutory management from the date the person is so restored.

Exercise of powers

179 Considerations affecting exercise of powers by statutory manager

(1) In exercising the powers conferred by this subpart, a statutory manager of a licensed insurer must have regard to—

(a) the purposes of this Act; and

(b) the principles set out in section 4 that are relevant to the exercise of those powers; and

(c) the advice of the Bank.

(2) Every statutory manager must—

(a) consult with the Bank, to the extent required by the Bank, as to the exercise of those powers:

(b) provide the reports that the Bank may require as to the state of the affairs, business, and statutory management of the licensed insurer to persons specified by the Bank (including, but not limited to, the Bank) in the form and with the frequency that the Bank may require.

(3) The powers conferred by this subpart on a statutory manager of a life insurer are subject to the requirements of subpart 3 of Part 2 (which relates to statutory funds).

180 Statutory manager to comply with directions of Bank

(1) Every statutory manager of a licensed insurer must comply with any directions given in writing by the Bank relating to the exercise of the powers of the statutory manager under this subpart.

(2) This section is subject to section 58 of the Corporations (Investigation and Management) Act 1989 (as applied by section 181).

Application of Corporations (Investigation and Management) Act 1989

181 Application of Corporations (Investigation and Management) Act 1989

The following provisions of the Corporations (Investigation and Management) Act 1989 apply for the purposes of this subpart with all necessary modifications as if a person declared to be subject to statutory management under this subpart were a corporation declared to be subject to statutory management under that Act:

(a) section 42 (which relates to a moratorium):

(b) section 43 (which contains a prohibition against the removal of assets), except that a person who commits an offence under section 43(2) is liable on summary conviction,—

(i) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(ii) in the case of a body corporate, to a fine not exceeding $500,000:

(c) section 44 (which relates to the statutory manager suspending payment of money owing):

(d) section 45 (which relates to management vesting in the statutory manager):

(e) section 46 (which relates to the powers of the statutory manager):

(f) section 47 (which empowers the statutory manager to carry on the business of the person in statutory management):

(g) section 48 (which empowers the statutory manager to pay creditors and to compromise claims):

(h) section 49 (which relates to the termination of contracts of agency or service):

(i) sections 50(1) and (2), 51, 53, and 72 (which relate to the power of the statutory manager to sell the business undertaking of the person in statutory management):

(j) section 52 (which relates to the liquidation of the person in statutory management):

(k) section 54 (which relates to a power to trace property improperly disposed of):

(l) section 57 (which relates to termination of the appointment of the statutory manager):

(m) section 58 (which allows a statutory manager to apply to the High Court for directions):

(n) section 59 (which allows the High Court to confer additional powers on the statutory manager):

(o) section 60 (which relates to advisory committees):

(p) section 61 (which provides for a prior winding up, liquidation, or receivership to cease):

(q) section 64 (which relates to certain persons not being entitled to be consulted about the exercise of powers):

(r) section 65 (which relates to the expenses of statutory management):

(s) section 66 (which relates to advances to statutory managers and members of advisory committees):

(t) sections 67 and 68 (which relate to a duty to deliver books and property to the statutory manager and an offence to destroy, alter, or conceal records):

(u) section 69 (which relates to a duty to report offences):

(v) sections 71 and 71A (which relates to the application of other Acts).

Power to obtain documents and information

182 Powers to obtain information and documents

A statutory manager has, and may exercise, all of the powers conferred on a liquidator of a company by sections 261 to 267 of the Companies Act 1993 in the same manner as if the statutory manager were the liquidator of a company in liquidation under that Act (and, for that purpose, section 373(3) of that Act applies with all necessary modifications).

Sales and dispostions

183 Sale requires Bank's approval

The statutory manager may not sell or otherwise dispose of the following unless the statutory manager has consulted with the Bank and the Bank, with the consent of the Minister, has given approval in writing to the sale or other disposition and the terms and conditions of it:

(a) the whole or any substantial part of the business undertaking of a licensed insurer under section 50(1) of the Corporations (Investigation and Management) Act 1989 (as applied by section 181):

(b) any of the shares of a body corporate formed and registered under section 50(2)(a) of that Act (as applied by section 181):

(c) the whole or any substantial part of the business undertaking of a body corporate formed and registered under section 50(2)(a) of that Act (as applied by section 181).

184 Consents not required under other enactments

The provisions of any enactment or agreement requiring any consent, licence, permission, clearance, or other authority do not apply in respect of the following (being a sale or disposition to which the Bank has, with the consent of the Minister, given its approval under section 183):

(a) the sale or other disposition of the whole or any part of the business undertaking of a licensed insurer under section 50(1) of the Corporations (Investigation and Management) Act 1989 (as applied by section 181):

(b) the sale or other disposition under section 50(2)(e) of that Act (as applied by section 181) of—

(i) any of the shares of a body corporate formed and registered under section 50(2)(a) of that Act; or

(ii) the whole or any part of the business undertaking of that body corporate.

Body corporate may be formed to acquire branch

185 Statutory manager may form body corporate to acquire business of branch of overseas person

(1) If a licensed insurer that is an overseas person is declared to be subject to statutory management, the statutory manager may—

(a) form and register a body corporate under the Companies Act 1993 or any other Act:

(b) subscribe for or acquire, as trustee for the overseas person, all or any of the shares of the body corporate:

(c) allot or issue all or any of the shares in the body corporate as fully or partly paid, as the case may be, up to the value, after deducting the value of any liabilities vested, of any property, rights, and assets vested in the body corporate under subsection (2).

(2) The Governor-General may, by Order in Council, on the advice of the Minister, given in accordance with a recommendation of the Bank, declare that the whole or any part of any property, rights, assets, and liabilities of the overseas insurer relating to its New Zealand business will vest in the body corporate referred to in subsection (1)(a) on a date specified in the order (and the property, rights, assets, and liabilities vest in the body corporate on the date specified).

(3) Nothing in subsection (2) reduces, extinguishes, or affects any obligation or liability of an overseas person.

(4) Every body corporate referred to in subsection (1)(a) is, for the purposes of this subpart, deemed to be a licensed insurer subject to statutory management as if the body corporate had been declared to be subject to statutory management under this subpart, and the statutory manager of the overseas insurer is the statutory manager of that body corporate as if that statutory manager had been appointed under that section and the provisions of this subpart apply accordingly.

186 Vesting of property subject to security

(1) An order may be made under section 185 vesting any property, rights, and assets of an overseas person in a body corporate formed and registered under that section despite the ex-

istence, or the terms and conditions, of any security over the property, or those rights or assets, in favour of any other person.

(2) Any property, rights, or assets that are declared to vest under an order made under that section in the body corporate, being property, rights, or assets subject to a security in favour of any other person, continue to be subject to the security.

187 Proof of vesting

(1) No registrar is obliged solely by reason of section 185 to change the name of any overseas person referred to in that section to that of any body corporate formed and registered under that section in any books or registers or in any document.

(2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer, by the body corporate is, in the absence of evidence to the contrary, sufficient proof that the property is vested in the body corporate if the instrument—

(a) is executed or purports to be executed by the body corporate; and

(b) relates to any property held before the date specified in an Order in Council made under section 185 by the overseas person; and

(c) contains a statement that the property has become vested in the body corporate by virtue of the provisions of that section.

(3) In this section, **registrar** means the Registrar-General of Land, a Registrar of Deeds, or any other person charged with the keeping of any books or registers.

188 Provisions applying if liabilities included in sale

If all or any part of any liability of a body corporate formed and registered under section 185(1), or all or any part of any liability relating to the New Zealand business of any overseas person, is included in a sale or other disposition referred to in section 50 of the Corporations (Investigation and Management) Act 1989 (as applied by section 181), nothing in section 53(a) of that Act relieves any overseas person from any obligation in respect of that liability.

Provisions relating to liquidations

189 Application of specified provisions of Companies Act 1993 relating to liquidations

(1) The specified provisions apply to a licensed insurer that is subject to statutory management in all respects, and with the modifications that may be necessary, as if—

(a) the insurer was a company in liquidation under the Companies Act 1993; and

(b) the statutory manager of the insurer was the liquidator of the company; and

(c) the date on which, and the time at which, the insurer became subject to statutory management was the date on which, and the time at which, the liquidation commenced.

(2) In this section, the **specified provisions** are sections 275, 292 to 301, 310G, 310I, and 312 of the Companies Act 1993.

(3) Nothing in section 263 of the Companies Act 1993 applies to a licensed insurer by virtue of the application of section 312 of that Act.

(4) The reference in section 275(4) of the Companies Act 1993 to clause 1(1)(a) of Schedule 7 of the Companies Act 1993 must be read as a reference to section 65 of the Corporations (Investigation and Management) Act 1989 (as applied by section 181).

Obligations incurred by statutory manager

190 Obligations incurred by statutory manager

(1) Any obligations incurred by a statutory manager of a licensed insurer in the course of his or her duties as statutory manager are incurred by that statutory manager on behalf of the insurer, and the statutory manager does not incur personal liability for those obligations.

(2) In the winding up or liquidation of a licensed insurer, an associated person of a licensed insurer, or a subsidiary of a licensed insurer, all amounts required to satisfy obligations incurred by the statutory manager on behalf of the insurer, associated person, or subsidiary must be paid in priority to all other debts.

Value of contracts of insurance

191 Statutory manager may value policies

(1) The statutory manager of a licensed insurer may determine the amount of the liability of the insurer to each policyholder under each contract of insurance entered into in New Zealand by the insurer in the manner and on the basis that the statutory manager decides.

(2) The statutory manager must give to each policyholder notice in writing of the amount of the liability under the policyholder's contract of insurance as determined under subsection (1).

(3) The amount of the liability of the licensed insurer, as determined by the statutory manager under subsection (1), is binding upon each policyholder to whom notice is given under subsection (2).

192 Value of contracts of insurance may be reduced by Order in Council

(1) This section applies to a licensed insurer that is in statutory management.

(2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, reduce the value of 1 or more of the licensed insurer's contracts of insurance.

(3) The Order in Council may provide for the reduction to be on the terms and subject to the conditions (if any) that are specified in the order.

Auditor, actuary, and annual financial statements and records

193 Appointment of auditor and actuary

(1) The statutory manager of a licensed insurer must appoint 1 or more persons (whether as individuals or as the members of any firm or firms) who are qualified for appointment as auditors of a company under the Companies Act 1993 and who have been approved by the Bank to be the auditor of the insurer.

(2) The statutory manager of a licensed insurer must appoint a person who has been approved by the Bank to be the actuary of the insurer.

(3) Every appointment must be for a term not exceeding 2 years, but any person appointed as auditor or actuary continues in office until a successor comes into office.

(4) A person appointed as auditor or actuary is eligible for reappointment.

(5) The auditor or actuary must be paid the fees that are fixed by the statutory manager with the approval of the Bank.

(6) Every auditor and every actuary has a right of access at all times to the books and papers of the licensed insurer, and is entitled to require from its officers and employees the information and explanations that the auditor or actuary thinks necessary for the performance of the auditor's or actuary's duties (as the case may be).

194 Prior auditor or actuary ceases to hold office

A person holding office as auditor or actuary of a licensed insurer at the time that it is declared to be subject to statutory management ceases to hold that office but may be appointed under section 193 as auditor or actuary (as the case may be) of the insurer.

195 Removal of auditor or actuary

(1) An auditor or actuary appointed under section 193 may be removed from office by the Minister, by notice in writing to the auditor or actuary, for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(2) The notice must be published in the *Gazette* as soon as practicable.

196 Annual financial statements

(1) The statutory manager of a licensed insurer must, within 3 months after the end of each financial year or a later date that is approved by the Bank, prepare the following statements showing the financial position of the licensed insurer and its subsidiaries at the end of that year and the results of their trading for that year:

(a) a statement of financial position and statement of financial performance of the insurer; and

(b) a consolidated statement of financial position and consolidated statement of financial performance of the insurer and its subsidiaries.

(2) The financial statements referred to in subsection (1) must each be signed by the statutory manager.

(3) The financial statements referred to in subsection (1) must be audited and reported on by the auditor.

197 Annual report by statutory manager

(1) The statutory manager of a licensed insurer must, after the end of each financial year, prepare a report on the conduct of the management and the affairs of the licensed insurer and its subsidiaries.

(2) The report, together with the financial statements and the auditor's report on them, must be submitted to the Minister and the Bank within 7 days after the completion of the auditor's report.

(3) The report, financial statements, and the auditor's report on them must within 14 days after submission to the Minister be filed,—

(a) in the case of a licensed insurer that is a company, with the Registrar of Companies:

(b) in the case of any other body corporate, with the person exercising functions corresponding with those of the Registrar of Companies.

Termination of statutory management

198 Termination of statutory management by Order in Council

(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, declare that 1 or more of the following persons who are subject to statutory management ceases to be subject to statutory management:

(a) a licensed insurer:

(b) an associated person of a licensed insurer:

(c) a subsidiary of a licensed insurer.

(2) A person who is affected by the making of an Order in Council under section 171 may request the Bank to make a recommendation under subsection (1).

(3) If an Order in Council is made under subsection (1) declaring that a licensed insurer ceases to be subject to statutory management,—

(a) every subsidiary of the insurer, except any subsidiary specified in the order, ceases to be subject to statutory management on the same date as that specified as the date on which, and at the same time as that specified as the time at which, the insurer ceases to be subject to statutory management:

(b) the appointment of any person appointed as a statutory manager of every such subsidiary terminates on the date and at the time referred to in paragraph (a).

199 Termination of statutory management on liquidation

A licensed insurer, an associated person of a licensed insurer, or a subsidiary of a licensed insurer ceases to be subject to statutory management if the insurer, associated person, or subsidiary, as the case may be, is put into liquidation on the application of the statutory manager.

200 Time of termination

(1) If an Order in Council is made under section 198 or a licensed insurer, an associated person, or a subsidiary is put into liquidation,—

(a) the person ceases to be subject to statutory management at the specified time; and

(b) the appointment of any statutory manager appointed in respect of the person terminates at the specified time.

(2) In this section, **specified time** means,—

(a) if an Order in Council is made under section 198, the date and time specified in the order:

(b) if a liquidator is appointed, the date and time of the liquidator's appointment.

Part 5
Miscellaneous provisions

Access to information by overseas supervisor

201 Access to information by overseas supervisor

(1) For the purpose of the exercise by an overseas supervisor of its supervisory functions, the Bank may authorise an overseas supervisor to do either or both of the following:

(a) conduct an inspection of any licensed insurer that is an overseas person:

(b) require any licensed insurer that is an overseas person to supply to the overseas supervisor any information, data, or forecasts relating to that person.

(2) The information, data, or forecasts that an overseas supervisor may be authorised to obtain may include, without limitation, information about the affairs of a particular customer or client of the licensed insurer.

(3) The Bank may grant an authorisation only if it is satisfied that sufficient provision exists to protect the confidentiality of the information, data, or forecasts obtained or required by the overseas supervisor.

(4) An authorisation may be—

(a) granted for the period or periods that the Bank thinks fit; and

(b) varied, revoked, or amended by the Bank.

(5) The Bank must give notice in writing to a licensed insurer if the Bank—

(a) grants an authorisation in relation to that person; or

(b) varies, revokes, or amends that authorisation.

(6) This section has effect despite anything to the contrary in any other enactment or rule of law.

202 Duties of person on receipt of notice under section 201

(1) A licensed insurer that is an overseas person must, on receipt of a notice from the Bank under section 201, comply with that notice by, as the case may be,—

(a) permitting the overseas supervisor to conduct an inspection of that person; or

(b) supplying the overseas supervisor with the required information, data, or forecasts within the time, and at the place, specified in the notice.

(2) A licensed insurer that is an overseas person commits an offence if the person fails to comply in any respect with any requirements notified by the Bank under this section and is liable, on summary conviction, to a fine not exceeding $500,000.

Offences

203 False declarations and representations

(1) Every person commits an offence who, for any purpose relating to this Act, either on the person's own behalf or on behalf of any other person,—

(a) either orally or in writing, makes any declaration or representation that, to the person's knowledge, is false or misleading in any material particular; or

(b) supplies to the Bank, or makes use of, any document knowing it to contain any declaration or representation of that kind; or

(c) supplies to the Bank, or makes use of, a document knowing that it is not genuine.

(2) Every person who commits an offence under this section is liable on summary conviction,—

(a) in the case of an individual, to a fine not exceeding $200,000:

(b) in the case of a body corporate, to a fine not exceeding $500,000.

(3) This section does not apply in the case of section 15(4).

204 Liability of directors

If a body corporate is convicted of an offence under this Act, every director of the body corporate is guilty of an offence if it is proved—

(a) that the act that constituted the offence took place with his or her authority, permission, or consent; or

(b) that he or she—

(i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and

(ii) failed to take reasonable steps to prevent or stop it.

205 Defence for offences against this Act

(1) In any prosecution of a person for an offence under this Act, it is a defence if the person proves that—

(a) the failure to comply with this Act was due to the act or omission of another person, or some other cause beyond the person's control; and

(b) the person took reasonable precautions and exercised due diligence to avoid the failure.

(2) For the purposes of subsection (1)(a), **another person** does not include a director, employee, or agent of the person charged with the offence.

(3) A person is not, without the leave of the court, entitled as part of a defence provided by this section to rely on any of the circumstances specified in subsection (1)(a) unless the person has, not later than 7 working days before the date on which the hearing of the proceedings commences, served on the prosecution a notice in writing identifying the act, omission, or cause relied on by the person.

206 Power of court to discharge

(1) If a person is charged with an offence under this Act, the court may direct that the defendant be discharged if the court considers that the alleged failure to comply with the Act was in respect of matters that were immaterial.

(2) A direction under subsection (1) may be made at any stage of the proceeding—

(a) on the motion of the court or on the application of the defendant; and

(b) after giving both the prosecutor and the defendant a reasonable opportunity to be heard on the matter.

(3) A discharge under this section is deemed to be an acquittal.

(4) Nothing in this section limits sections 106 to 109 of the Sentencing Act 2002.

Ban ordered by District Court

207 Power to ban certain persons from participating in insurance business

(1) A District Court may, on the application of the Bank, make an order in respect of a person under subsection (2) if the District Court considers that the person—

(a) has, in relation to an insurance business, engaged in an act, omission, or course of conduct that constitutes serious wrongdoing and that, accordingly, the person is not a fit and proper person to participate in insurance business in 1 or more of the ways described in subsection (2); or

(b) as a director of a licensed insurer, has persistently or seriously failed to comply with this Act or the regulations; or

(c) is a director of a licensed insurer, being an insurer that has persistently or seriously failed to comply with any direction, condition, or other requirement imposed by or under this Act or the regulations, and the person has persistently failed to take reasonable steps to prevent or stop those failures; or

(d) is prohibited from participating in an insurance business in 1 or more of the ways specified in subsection (2)(a) to (g) under an order made, or a notice given, under a law of a country, State, or territory outside New Zealand.

(2) The order is an order banning a person from being or doing 1 or more of the following:

(a) being a director of an insurer:

(b) being concerned or taking part in the management of an insurer:

(c) being a shareholder of an insurer:

(d) being an employee or other agent of an insurer:

(e) acting under a contract for services with an insurer:

(f) being an insurance intermediary:

(g) otherwise participating in an insurance business in any other way (whether paid or unpaid).

(3) Every application to a District Court under this section must be made by an originating application.

(4) A ban under this section has effect from the date on which the order is made even though an appeal may have been lodged under section 209.

(5) An order may be—

(a) made even though the person concerned may be criminally liable for the matters on the grounds of which the order is to be made; and

(b) permanent or for a specified time; and

(c) subject to the terms and conditions that the District Court thinks fit; and

(d) cancelled or varied at any time by the District Court.

(6) The District Court may make any order in the matter as to costs and otherwise as it thinks fit.

(7) As soon as practicable after an order is made, the Registrar of the District Court must send a copy of the order to the Bank.

208 Notice of hearing

(1) If an application is made for an order under section 207, the Registrar of the District Court must—

(a) fix the time and place for the hearing of the application; and

(b) as soon as practicable, give notice of the application and of the time and place of hearing to—

(i) the Bank; and

(ii) the respondent; and

(iii) any other person who appears to the Registrar of the District Court to have a sufficient connection with the proceedings.

(2) On the hearing of the application,—

(a) the Bank must appear and call to the attention of the District Court any matters that seem to the Bank to be relevant, and may give evidence or call witnesses; and

(b) the respondent may appear and give evidence or call witnesses; and

(c) any person referred to in subsection (1)(b)(iii) may also appear and be heard.

209 Appeals to High Court

(1) Any person who has a right to appear and be heard in any proceedings under section 207 may appeal to the High Court if a District Court—

(a) has made or refused to make an order under that section; or

(b) has otherwise finally determined or has dismissed the proceedings.

(2) An appeal—

(a) must be brought by way of notice of appeal in accordance with the rules of court; and

(b) must be lodged within—

(i) 20 working days after the making of the order or decision; or

(ii) any further time the High Court allows on application made before or after that period expires.

210 Procedure on appeal

(1) An appeal must be heard as soon as practicable after it is lodged.

(2) An appeal is by way of rehearing.

(3) On hearing the appeal, the High Court may—

(a) confirm, reverse, or modify the decision appealed against; and

(b) make any decision that the District Court could have made in respect of the matter.

(4) The High Court's decision in the determination of an appeal is final.

211 Register of banned persons

(1) The Bank must keep a register of persons banned under section 207 (the **register**).

(2) The register may be—

(a) an electronic register; or

(b) kept in any other manner that the Bank thinks fit.

(3) The Bank must take all reasonable steps to ensure that the information contained in the register is available to members of the public at all reasonable times.

212 Search of register

(1) A person may search the register in accordance with this Act or regulations.

(2) The register may be searched only by reference to the prescribed criteria.

(3) A search of the register may be carried out only by the following persons for the following purposes:

(a) an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual:

(b) a person for the purpose of determining whether or not a person is banned under section 207 (and, if so, the nature and extent of the ban).

(4) A search of the register for personal information that has not been carried out in accordance with this section constitutes an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

213 Offence for banned person to participate in insurance business in breach of order

A person commits an offence if the person fails to comply with an order under section 207 and is liable, on summary conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $200,000 (or both):

(b) in the case of a body corporate, to a fine not exceeding $1,000,000.

Notice and service

214 Notice and service of documents

(1) Unless this Act provides otherwise, if a provision of this Act requires or authorises any notice or other document, or any

notification, to be given to a person, the notice, document, or notification must be given in writing to the person—

(a) by delivering it personally or by an agent (such as a courier) to the person; or

(b) by sending it by prepaid post addressed to the person at the person's usual or last known place of residence or business; or

(c) by sending it by fax or email to the person's fax number or email address provided by the person for the purpose; or

(d) in any other manner a District Court Judge directs.

(2) In the absence of proof to the contrary, a notice, document, or notification sent by to a person in accordance with—

(a) subsection (1)(b) must be treated as having been given to the person when it would have been delivered in the ordinary course of the post; and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted:

(b) subsection (1)(c) must be treated as having been given to the person on the second working day after the day on which it is sent.

(3) If a person is absent from New Zealand, a notice, document, or notification given to the person's agent in New Zealand in accordance with subsection (1) must be treated as having been given to the person.

(4) If a person has died, the notice, document, or notification may be given, in accordance with subsection (1), to his or her personal representative.

Protection from liability and indemnity

215 Protection from liability

(1) This section applies to—

(a) every statutory manager of a licensed insurer or of an associated person or subsidiary of a licensed insurer; and

(b) every officer or employee of the Bank; and

(c) every investigator; and

(d) every director of the Bank.

(2) No person to whom this section applies is personally liable for an act done or omitted to be done in the exercise or performance in good faith of the person's functions, duties, or powers under this Act.

216 Indemnity

(1) The Crown indemnifies the persons listed in subsection (2) for any liability that arises from the exercise or purported exercise of, or omission to exercise, any power conferred by this Act unless it is shown that the exercise or purported exercise of, or omission to exercise, the power was in bad faith.

(2) The persons are—
- (a) the Bank; and
- (b) every statutory manager of a licensed insurer or of an associated person or subsidiary of a licensed insurer; and
- (c) every officer or employee of the Bank and
- (d) every investigator; and
- (e) every director of the Bank.

(3) Any money required for the purposes of this section must be paid out of a Crown Bank Account without further authority than this section.

(4) The indemnity conferred by subsection (1) extends to legal costs incurred in defending a proceeding.

(5) Within 12 sitting days of the making of any payment under this section, the Minister must present to the House of Representatives a report that contains details of the circumstances giving rise to the liability of the Crown, the amount of the payment, the person to whom the payment was made, and any other relevant matters.

Regulations

217 Regulations

(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for all or any of the following purposes:

(a) declaring a person or class of persons to be a related party for the purposes of this Act:

(b) declaring a type of insurance not to be continuous disability insurance for the purposes of this Act:

(c) declaring an entity to be an entity to which section 8(2)(c) applies:

(d) prescribing additional requirements for an applicant to be entitled to be issued with a licence:

(e) prescribing additional matters for the purposes of section 19(2)(g):

(f) prescribing conditions or matters that conditions may relate to for the purposes of section 21(2)(e) or 45(2)(d):

(g) prescribing matters for the purposes of section 44:

(h) prescribing the manner in which annual gross premium income is determined and the amount of that income for the purposes of section 62(2)(a):

(i) prescribing—

(i) the circumstances in which disclosure of an overseas policyholder preference under section 70 must be made (including prescribing to whom and when the disclosure must be made):

(ii) the manner in which the disclosure must be made:

(j) prescribing types of risk for the purposes of section 71:

(k) prescribing requirements in respect of interim financial statements referred to in section 80(3):

(l) prescribing the manner in which amounts are ascertained or calculated, notices are given, applications are made, or records are kept for the purposes of sections 85, 90, 94, 96, 106, and 118:

(m) prescribing arrangements for the purposes of section 90:

(n) prohibiting investments, or the retention of investments, for the purposes of section 95(2)(d):

(o) declaring a benefit to be a non-participating benefit:

(p) prescribing the manner in which a starting amount must be ascertained for the purposes of section 107:

(q) prescribing requirements for the purposes of section 118(1)(b)(iv):

(r) prescribing forms for the purposes of this Act, and prescribing—

(i) the inclusion in, or attachment to, forms of specified information or documents:

(ii) forms to be signed by specified persons:

(s) prescribing fees payable in respect of any matter under this Act or the manner in which fees may be calculated:

(t) prescribing procedures, requirements, and other matters for the register kept under section 211, including matters relating to the operation of that register, access to that register, and the location of, and hours of access to, that register:

(u) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) Regulations made under this section or any other provision of this Act may prescribe different matters in respect of different classes of person.

(3) The Bank may refuse to perform a function or exercise a power until a prescribed fee is paid.

(4) Any Order in Council made under subsection (1) may authorise the Bank to refund or waive, in whole or in part and on any conditions as may be prescribed, payment of any fee or amount payable in relation to any person or class of persons.

(5) Any fee or amount payable to the Bank is recoverable by the Bank in any court of competent jurisdiction as a debt due to the Bank.

Repeals and consequential amendments

218 Repeals

The following enactments are repealed: [to come]

219 Amendments to other Acts

The enactments specified in Schedule 3 are amended in the manner indicated in that schedule.

Transitional provisions

220 Transitional provisions

[To come.]

Schedule 1

s 55

General provisions relating to incorporation by reference

1 Material incorporated by reference into solvency standards

(1) Material may be incorporated by reference into a solvency standard—

(a) in whole or in part; and

(b) with any modifications, additions, or variations specified in the solvency standard.

(2) Material incorporated by reference—

(a) is the material as it exists at the time the solvency standard is approved; and

(b) has legal effect as part of the solvency standard for all purposes, except as provided in clauses 7 and 8.

2 Proof of material incorporated by reference

(1) A copy of any material incorporated by reference in a solvency standard must be—

(a) certified by the Governor as a correct copy of the material; and

(b) retained by the Bank.

(2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material into the solvency standard.

3 Access to material incorporated by reference

(1) The Bank—

(a) must make copies of all material incorporated by reference in a solvency standard available for inspection during normal working hours at the head office of the Bank; and

(b) must make copies of the material available for purchase at a reasonable price from the head office of the Bank; and

(c) may make copies of the material available in any other way that the Governor considers appropriate in the circumstances (such as on an Internet site); and

(d) must give notice in the *Gazette* of how the material is available for inspection and purchase.

(2) Subclause (1) applies to material when it is first incorporated into a solvency standard, and to any subsequent amendment or replacement of the material that is incorporated into the standard.

(3) A failure to comply with this clause does not invalidate a solvency standard.

4 Effect of amendments to, or replacements of, material incorporated by reference

An amendment to, or replacement of, material incorporated by reference in a solvency standard has legal effect as part of the standard only if—

(a) the amendment or replacement material is made by the person or organisation that made the original material; and

(b) the amendment or replacement material is of the same general character as the original material; and

(c) either—

(i) a subsequent solvency standard states that the particular amendment or replacement material has legal effect as part of the standard; or

(ii) the Governor, by notice in the *Gazette*, adopts the amendment or replacement material as having legal effect as part of the standard.

5 Effect of expiry of material incorporated by reference

Material incorporated by reference in a solvency standard that expires, is revoked, or ceases to have effect, ceases to have legal effect as part of the standard only if—

(a) a subsequent solvency standard states that the material ceases to have that legal effect; or

(b) the Governor, by notice in the *Gazette*, states that the material ceases to have that legal effect.

6 Consultation before material incorporated by reference

(1) This clause applies if—

(a) the Bank proposes to incorporate material by reference into any solvency standard; or

(b) the Bank proposes to approve a solvency standard adopting amended or replacement material; or

(c) the Governor proposes to publish a notice in the *Gazette* adopting amended or replacement material.

(2) If any of the things referred to in subclause (1) are proposed, the Bank—

(a) must make copies of the material (which in this subclause includes any amended or replacement material) proposed to be incorporated by reference available for inspection during normal working hours at the head office of the Bank; and

(b) must make copies of the material available for purchase at a reasonable price from the head office of the Bank; and

(c) may make copies of the material available in any other way that the Governor considers appropriate in the circumstances (such as on an Internet site); and

(d) must give notice in the *Gazette* of how copies of the material may be inspected and purchased, and how people may make comments on the proposal; and

(e) must allow a reasonable opportunity for people to comment on the proposal; and

(f) must consider any comments made within the time allowed.

(3) A failure to comply with this clause does not invalidate a solvency standard.

7 Acts and Regulations Publication Act 1989 not applicable

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in a solvency standard, or to any amendment to, or replacement of, the material.

8 Regulations (Disallowance) Act 1989 not applicable

The Regulations (Disallowance) Act 1989 does not apply to material incorporated by reference in a solvency standard, or to any amendment to, or replacement of, the material.

Schedule 2

s 132

General provisions relating to search powers

Search warrants

1 Interpretation

In this schedule, unless the context otherwise requires,—

applicant means an investigator

issuing officer means a Judge of the High Court or a District Court Judge.

2 Application for search warrant

(1) An application for a search warrant must contain, in reasonable detail, the following particulars:

(a) the name of the applicant:

(b) the provision authorising the making of the application:

(c) the grounds on which the application is made (including the reasons why the legal requirements for issuing the warrant are believed by the applicant to be satisfied):

(d) the address or other description of the place proposed to be searched:

(e) a description of the item or items or other evidential material believed to be in or on or part of the place that are sought by the applicant:

(f) the period for which the warrant is sought:

(g) if the applicant wants to be able to execute the warrant on more than 1 occasion, the grounds on which execution on more than 1 occasion is believed to be necessary.

(2) The issuing officer may require the applicant to supply further information concerning the grounds on which the search warrant is sought.

(3) The applicant must disclose in the application—

(a) details of any other application for a search warrant that the applicant knows to have been made within the previous 3 months in respect of the place proposed to be searched; and

(b) the result of that application or those applications.

(4) The applicant must, before making an application for a search warrant, make reasonable inquiries within the Bank, for the purpose of complying with subclause (3).

(5) The issuing officer may authorise the search warrant to be executed on more than 1 occasion during the period in which the warrant is in force if he or she is satisfied that this is required for the purposes for which the warrant is being issued.

(6) An application for a search warrant must contain or be accompanied by a statement by the applicant confirming the truth and accuracy of the contents of the application.

3 Mode of application for search warrant

(1) An application for a search warrant—

(a) must be in writing, unless subclause (3) applies; and

(b) may be transmitted to the issuing officer electronically.

(2) The applicant must appear in person before, or communicate orally with, the issuing officer, unless subclause (5) applies.

(3) An issuing officer may allow an application for a search warrant to be made orally (for example, by telephone call) or by personal appearance and excuse the applicant from putting all or any part of the application (including any required material) in writing if—

(a) the issuing officer is satisfied that the delay that would be caused by requiring an applicant to put all or any part of the application (including any required material) in writing would compromise the effectiveness of the search; and

(b) the issuing officer is satisfied that the question of whether the warrant should be issued can properly be determined on the basis of an oral communication or a personal appearance (together with the material described in paragraph (c)); and

(c) the information required by clause 2(1) to (3) is supplied (whether orally, or partly orally and partly in writing) to the issuing officer.

(4) An issuing officer who allows an application for a search warrant to be made under subclause (3) must record the grounds for the application as soon as practicable.

(5) An issuing officer may allow an application for a search warrant to be made without either an appearance in person before, or an oral communication with, the issuing officer if—

(a) the issuing officer is satisfied that there are special circumstances that prevent the making of either a personal appearance before, or an oral communication with, the issuing officer, without an undue delay that would compromise the effectiveness of the search; and

(b) the issuing officer is satisfied that the question of whether the search warrant should be issued can properly be determined on the basis of any written communication by the applicant (including the material described in paragraph (c)); and

(c) the information required by clause 2(1) to (3) has been supplied to the issuing officer.

(6) An issuing officer who allows an application for a search warrant to be made without either an appearance in person or an oral communication by the applicant must record the grounds for the application as soon as practicable.

4 Retention of documents

(1) A copy (whether in electronic form or otherwise) of every written application for a search warrant, or (in the case of an oral application) the record of the application made by the issuing officer, must be retained under the control of the Registrar of the District Court at which, or under the control of the Registrar of the District Court that is closest to the place at which, the application was made, until,—

(a) in a case where a search warrant is issued, the completion of any proceedings in respect of which the validity of the warrant may be in issue; and

(b) in any other case, the expiry of 2 years after the records were first retained under the control of the Registrar of a District Court.

(2) An applicant to whom a search warrant is issued must retain (whether in electronic form or otherwise) the warrant, a copy of the application (if made in written form), and all documents tendered by the applicant in support of the application, until,—

(a) in the case of a warrant that is executed, the completion of any proceedings in respect of which the validity of the warrant may be in issue; and

(b) in any other case, the destruction or transfer of the warrant and other documents is required by the Public Records Act 2005 or any other enactment or rule of law.

5 Restrictions on issue of search warrant

An issuing officer must not issue a warrant to seize any thing held by a lawyer that is a communication of a kind to which legal professional privilege normally applies unless the issuing officer is satisfied that the information provided by the applicant indicates that the thing was made, received, completed, or prepared—

(a) for a dishonest purpose; or

(b) for the purpose of planning or committing an offence.

6 Form and content of search warrant

(1) Every search warrant issued must be in the prescribed form.

(2) Every search warrant issued must be directed to every person who has authority to execute the warrant.

(3) A search warrant may be—

(a) executed by any or all of the persons to whom it is directed:

(b) subject to any conditions specified in the warrant that the issuing officer considers reasonable, including (without limitation)—

(i) any restriction on the time of execution that is reasonable:

(ii) a condition that the occupier or person in charge of a place must provide reasonable assistance to a person executing the warrant if, in the absence of such assistance, it would not be practical to execute the warrant without undue delay:

(c) executed only once, unless execution on more than 1 occasion has been authorised.

(4) Every search warrant must contain, in reasonable detail, the following particulars:

(a) the name of the issuing officer and the date of issue:

(b) the provisions authorising the issue of the warrant (including, where relevant, the suspected offence or offences):

(c) that the person executing the warrant may use any assistance that is reasonable in the circumstances:

(d) that any person authorised to do so may execute the warrant:

(e) that the person executing the warrant may use any force that is reasonable in the circumstances to enter or break open or access any area within the place being searched, or the thing found:

(f) the address or description of the place that may be searched:

(g) a description of what may be seized:

(h) the period during which the warrant may be executed, being—

(i) a period specified by the issuing officer not exceeding 14 days from the date of issue; or

(ii) if the issuing officer is satisfied that a period of longer than 14 days is necessary for execution, a period specified by the issuing officer not exceeding 30 days from the date of issue:

(i) any conditions specified by the issuing officer under subclause (3)(b):

(j) if the warrant may be executed on more than 1 occasion, the number of times that the warrant may be executed:

(k) if the warrant is intended to authorise the remote access and search of things such as Internet data storage facilities that are not situated at a physical location that can be searched, the access information that identifies the thing to be searched remotely:

(l) an explanation of the availability of relevant privileges and an outline of how any of those privileges may be claimed.

(5) A person is not required, as a consequence of a condition imposed under subclause (3)(b)(ii), to give any information tending to incriminate the person.

7 Transmission of search warrant

If it is not possible or practicable for the person charged with executing the warrant to have it in his or her possession at the time of execution, one of the following documents (which is deemed for all legal purposes to constitute the warrant) may be executed:

(a) a facsimile or other electronic copy of a warrant issued by the issuing officer:

(b) a copy made by the person to whom the warrant is directed, at the direction of the issuing officer and endorsed to that effect.

8 When search warrant executed

A search warrant is executed when the person executing the warrant and any person assisting in the execution of the warrant—

(a) has seized all the items specified in the warrant; or

(b) leaves the place being searched and does not return within 4 hours.

9 When search warrant invalid

(1) A search warrant is invalid—

(a) if, having regard to the information contained in the application, the grounds or conditions for lawful issue of a warrant set out in section 129 were not satisfied at the time the search warrant was issued:

(b) if the warrant contains a defect, irregularity, omission, or want of form, that is likely to mislead anyone executing or affected by the warrant as to its purpose or scope.

(2) If a warrant is invalid under this section, section 204 of the Summary Proceedings Act 1957 does not apply to that warrant.

Carrying out inspection and search powers

10 Application

For the purposes of this schedule, **search power** means—

(a) every search warrant issued under this Act; and

(b) every power conferred under this Act to enter and search (without warrant) any place.

11 Search powers

Every search power authorises the person exercising it—

(a) to enter and search the place that the person is authorised to enter and search, and any item or items found in that place, at any time that is reasonable in the circumstances:

(b) to request any person to assist with the entry and search (including, without limitation, a member of a hapu or an iwi if the place to be entered is of cultural or spiritual significance to that hapu or iwi):

(c) to use any force that is reasonable for the purposes of the entry and search and any lawful seizure:

(d) to seize any thing authorised to be seized:

(e) to bring and use in or on the place searched any equipment, to use any equipment found on the place, and to extract any electricity from the place to operate the equipment that it is reasonable to use in the circumstances, for the purposes of carrying out the entry and search:

(f) to copy any document, or part of a document, that may lawfully be seized:

(g) to access and copy intangible material from computers and other data storage devices located at or accessible from the place searched (including copying by means of previewing, cloning, or other forensic methods either before or after removal for examination):

(h) to use any reasonable measures to—

(i) gain access to any computer or other data storage device that is at the place to be searched, or that can be accessed from a computer or other data storage device that is at that place; and

(ii) create a forensic copy of any material in such a computer or other data storage device:

(i) to take photographs and sound and video recordings of the place searched, and of any thing found in that place, if the person exercising the power has reason-

able grounds to believe that the photographs or sound or video recordings may be relevant in any proceedings related to the entry and search.

12 Items of uncertain status may be seized

If a person exercising a search power is uncertain whether any item found may lawfully be seized, and it is not reasonably practicable to determine whether that item can be seized at the place where the search takes place, the person exercising the search power may remove the item for the purpose of examination or processing to determine whether it may be lawfully seized.

13 Powers of persons called to assist

(1) Every person called on to assist a person exercising a search power is subject to the control of the person with overall responsibility for exercising that power.

(2) Every person called on to assist a person exercising a search power may—

(a) enter the place to be searched:

(b) while under the direction of the person exercising the power, use reasonable force in respect of any property for the purposes of carrying out the entry and search and any lawful seizure:

(c) search areas within the place that the person exercising the power has determined may lawfully be searched:

(d) seize any thing that may lawfully be seized:

(e) take photographs and sound and video recordings of the place, and things found in the place, if the person exercising the power has determined that those things may be lawfully taken:

(f) bring into or onto the place and use any equipment, make use of any equipment found on the place, or extract electricity from the place for the purposes of operating the equipment that the person exercising the power has determined may be lawfully used:

(g) access and copy intangible material from computers and other data storage devices located at or accessible from the place searched (including copying by means of pre-

viewing, cloning, or other forensic methods either before or after removal for examination):

(h) copy any document, or part of a document, that the person exercising the power has determined may be lawfully copied:

(i) use any reasonable measures to—

(i) gain access to any computer or other data storage device that is at the place to be searched, or that can be accessed from a computer or other data storage device that is at that place; and

(ii) create a forensic copy of any material in such a computer or other storage device.

(3) If a constable is assisting another person exercising the search power, the constable may, without any direction or supervision by the person he or she is assisting, exercise any power ordinarily exercisable by the constable.

(4) The person exercising the search power must—

(a) accompany any assistant on the first occasion when the assistant enters the place to be searched; and

(b) provide such other supervision of any assistant as is reasonable in the circumstances.

(5) Subclause (4) does not apply if the assistant is a constable.

14 Limitation on exercise of powers

The powers conferred by clauses 11 to 13 are subject to—

(a) any conditions imposed under clause 6(3)(b) by an issuing officer who issues a search warrant:

(b) clauses 22 to 26 (which relates to privilege).

15 Securing place to be searched

(1) The person carrying out a search may, in a manner and for a duration that is reasonable for the purposes of carrying out the search,—

(a) secure the place searched, any area within that place, or any thing found within that place:

(b) exclude any person from the place searched, or from any area within the place, or give any other reasonable direction to such a person, if the person carrying out the

search has reasonable grounds to believe that the person will obstruct or hinder the exercise of the power.

(2) A person who exercises any power under subclause (1) must on the request of any person affected by the exercise of the power—

(a) identify himself or herself; and

(b) advise the person affected of the reason and authority for the exercise of the power.

16 Seizure of evidential material in plain view

A person who exercises a search power or who is lawfully in any place as part of his or her duties may seize any item or items that are evidential material and that he or she, or any person assisting him or her, finds in the course of carrying out the search or as a result of observations at that place, if the person has reasonable grounds to believe that he or she could have seized the item or items under—

(a) any search warrant that could have been obtained by him or her under this Act or any other enactment; or

(b) any other search power exercisable by him or her under this Act or any other enactment.

17 Duty of persons with knowledge of computer or computer network or other data storage devices to assist access

(1) A person exercising a search power at any place may require a specified person to provide access information and other information or assistance that is reasonable and necessary to allow the person exercising the search power to access data held in, or accessible from,—

(a) a computer that is at the place being searched:

(b) any other data storage device that is at the place being searched.

(2) In this clause,—

access information includes access codes, passwords, and encryption keys, and any related information that enables access to a computer or other data storage device

specified person is a person who—

(a) is the owner or lessee of the computer or other data storage device, or is in possession or control of the computer or other data storage device, an employee of any of the above, or any service provider who provides service to the above and holds access information; and

(b) has relevant knowledge of—

(i) the computer or a computer network of which the computer or other data storage device forms a part; or

(ii) measures applied to protect data held in, or accessible from, the computer or other data storage device.

(3) A specified person may not be required under subclause (1) to give any information tending to incriminate the person.

(4) Subclause (3) does not prevent a person exercising a search power from requiring a specified person to provide information that—

(a) is reasonable and necessary to allow the person exercising the search power to access data held in, or accessible from, a computer or other data storage device that—

(i) is at or in the place to be searched; and

(ii) contains or may contain information tending to incriminate the specified person; but

(b) does not itself tend to incriminate the specified person.

(5) Subclause (3) does not prevent a person exercising a search power from requiring a specified person to provide assistance that is reasonable and necessary to allow the person exercising the search power to access data held in, or accessible from, a computer or other data storage device that—

(a) is at or in the place concerned; and

(b) contains or may contain information tending to incriminate the specified person.

18 Identification and notice requirements for person exercising search power

(1) A person exercising a search power must,—

(a) before initial entry into or onto the place to be searched,—

(i) announce his or her intention to enter and search the place under a statutory power:

(ii) identify himself or herself; and

(b) before or on initial entry into or onto the place to be searched,—

(i) give the occupier (if present) of the place a copy of the search warrant or advice about the enactment (the **authority**) that authorises him or her to conduct the entry and search; and

(ii) produce to the occupier of the place evidence of his or her identity (which may include details of a unique identifier instead of a name).

(2) The person exercising the search is not required to comply with subclause (1)(a) if he or she has reasonable grounds to believe that—

(a) no person is lawfully present in or on the place to be searched; or

(b) compliance with subclause (1)(a) would—

(i) endanger the safety of any person; or

(ii) prejudice the successful exercise of the entry and search power; or

(iii) prejudice ongoing investigations.

(3) The person exercising the search power may use reasonable force in order to effect entry into or onto the place if—

(a) subclause (2) applies; or

(b) following a request, the person present refuses entry or does not allow entry within a reasonable time.

(4) If the occupier of a place is not present at any time during the search, the person carrying out the search must,—

(a) on completion of the search, leave a copy of the authority referred to in subclause (1)(b)(i) and the notice referred to in subclause (5) in a prominent position at the place; or

(b) if this is not reasonably practicable, provide the copy of the authority referred to in subclause (1)(b)(i) and the notice referred to in subclause (5) to the occupier of the place no later than 7 days after the exercise of the power.

(5) The notice required by subclause (4) is a written notice containing the following particulars:

(a) the date and time of the commencement and completion of the search:

(b) the name or unique identifier of the person who had overall responsibility for that search:

(c) the address of the office to which inquiries should be made:

(d) if nothing is seized, the fact that nothing was seized:

(e) if anything was seized, the fact that seizure occurred and (if an inventory is not provided at the same time under clauses 19 to 21) that an inventory of the things seized will be provided to the occupier of the place no later than 7 days after the seizure.

(6) For the purposes of this clause and clauses 19 to 21,—

(a) the following persons may not be treated as the occupier of the place:

(i) any person who is under 14 years of age:

(ii) any person who the person executing the warrant has reasonable grounds to believe is not the occupier of the place:

(b) every reference to a copy of the authority referred to in subclause (1)(b)(i) means, in a case where a search is undertaken without a search warrant, written advice about the enactment that authorises the search.

(7) Subclauses (4) and (5) are subject to clauses 19 and 20.

19 Inventory of items seized

(1) The person who carries out a search must, at the time he or she seizes any thing, or as soon as practicable after the seizure of any thing, and in any case not later than 7 days after that seizure, provide to the occupier of the place from where the seizure took place, and to every other person who the person who carried out the search has reason to believe is the owner of the thing that was seized,—

(a) written notice specifying what was seized; and

(b) a copy of the authority referred to in clause 18(1)(b)(i).

(2) A written notice referred to in subclause (1)(a)—

(a) must contain information about the extent to which a person from whom a thing was seized or the owner of the thing has a right to apply—
  (i) to have access to the thing; or
  (ii) to have access to any document relating to the application for a search warrant or the exercise of any other search power that led to the seizure; and
(b) must contain information about the right to bring a claim that any privileged or confidential information has been seized; but
(c) need not be provided to the occupier of the place from which the seizure took place, if the person who carries out the search is satisfied that none of the items seized are owned by that person.

(3) If the occupier is not present at the time of seizure, a written notice referred to in subclause (1)(a) and a copy of the authority referred to in clause 18(1)(b)(i) may be provided to that person by leaving the notice in a prominent position at the place.

(4) Subclause (1) is subject to subclauses (2) and (3).

(5) This clause is subject to clauses 20 and 21.

20 Compliance with certain provisions may be deferred in certain circumstances

(1) A person exercising a search power may apply to a District Court Judge for a postponement of the obligation to comply with clause 18(4) or (5) or 19 on the grounds that compliance would—
  (a) endanger the safety of any person; or
  (b) prejudice ongoing investigations.

(2) An application may be made under subclause (1),—
  (a) in the case of an entry and search power that is a search warrant, at the time of the initial application or until the expiry of 7 days after the warrant is finally executed; and
  (b) in the case of any other entry and search power, until the expiry of 7 days after the search power is exercised.

(3) On an application under subclause (1), the District Court Judge may postpone for a specified period not exceeding 12 months the obligation to comply with clause 18(4) or (5) or 19, if the Judge is satisfied there are reasonable grounds for believing that compliance would—
(a) endanger the safety of any person; or
(b) prejudice ongoing investigations.

21 Further postponement of, or dispensation from, obligation to comply with certain provisions

(1) A person who has obtained an order under clause 20(3) may, before the expiry of that order, apply to a District Court Judge for a further postponement of, or dispensation from, the obligation to comply with clause 18(4) or (5) or 19 on the grounds that compliance would—
(a) endanger the safety of any person; or
(b) prejudice ongoing investigations.

(2) An application for a further postponement may only be made on 1 occasion.

(3) On an application under subclause (1), the District Court Judge may postpone for a further specified period not exceeding 12 months, or order a permanent dispensation from, the obligation to comply with clause 18(4) or (5) or 19 if the Judge is satisfied that compliance would—
(a) endanger the safety of any person; or
(b) prejudice ongoing investigations.

(4) A District Court Judge may not grant, under subclause (3), any postponement of, or dispensation from, an obligation in respect of any thing that has been seized, unless the thing seized is—
(a) a copy or clone of any information taken or made; or
(b) a thing the possession of which by the person from whom it was seized is unlawful under New Zealand law.

Privileges

22 Privileges

(1) If a person could, in a criminal proceeding, assert a privilege under sections 54 to 57 of the Evidence Act 2006 in respect

of any communication or information, the person is taken to have the same privilege for the purposes of a search warrant or exercise of any other search power under this Act.

(2) Subclause (3) applies to documents that are books of account or accounting records kept—

(a) by a solicitor in relation to any trust account money that is subject to section 112 of the Lawyers and Conveyancers Act 2006; or

(b) by a nominee company that—

(i) is subject to practice rules made by the Council of the New Zealand Law Society pursuant to section 96 of the Lawyers and Conveyancers Act 2006; and

(ii) is operated by a barrister and solicitor or an incorporated law firm as a nominee in respect of securities and documents of title held for clients.

(3) The application by subclause (1) of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect—

(a) the issuing of a search warrant or exercise of any other search power in respect of a document to which this subclause applies; or

(b) the obligation to comply with that search warrant or other search power in respect of a document to which this subclause applies; or

(c) the admissibility, in a criminal proceeding for an offence described in the search warrant, or for an offence in respect of which any other search power was exercised, of any evidence that relates to the contents of a document obtained under the search warrant or as the result of the exercise of any other search power.

(4) A person who has a privilege under this clause has the right—

(a) to prevent the search under this Act of any communication or information to which the privilege would apply if it were sought to be disclosed in a proceeding:

(b) to require the return of any such communication or information to the person if it is seized or secured by a person exercising a search power pending determination of the claim to privilege.

(5) Section 65 of the Evidence Act 2006 (which relates to waiver of privilege) applies in respect of any privilege under this clause.

(6) Nothing in this clause affects the application of section 60 of the Evidence Act 2006 (which relates to the privilege against self-incrimination).

23 Searches affecting privileged materials

(1) This clause applies if—

(a) a person executes a search warrant; or

(b) a person exercising a search power has reasonable grounds to believe that any thing discovered in the search may be the subject of a privilege referred to in clause 22(1).

(2) If this clause applies, the person responsible for executing the search warrant or other person exercising the search power must—

(a) provide to any person who he or she believes may be able to claim a privilege referred to in clause 22(1) a reasonable opportunity to claim it; and

(b) if the person executing the search warrant or exercising the other search power is unable to identify or contact a person who may be able to claim a privilege, or that person's lawyer, within a reasonable period, the person executing the search warrant or exercising the other search power may—

(i) apply to the District Court for a determination as to the status of the thing; and

(ii) do any thing necessary to enable that court to make that determination.

24 Interim steps pending resolution of privilege claim

If a person executing a search warrant or exercising a search power is prohibited under clause 22 or 23 from searching any thing, the person—

(a) may—

(i) secure the thing; and

(ii) if the thing is intangible (for example, computer data), secure the thing by making a forensic copy; and

(iii) deliver the thing, or a copy of it, to the District Court, to enable the determination of a claim to privilege; and

(b) must supply the lawyer or other person who may or does claim privilege with a copy of, or access to, the secured thing; and

(c) must not search the thing secured, unless no claim of privilege is made, or a claim of privilege is withdrawn, or the search is in accordance with the directions of the court determining the claim of privilege.

25 Claims for privilege for things sought to be seized or seized

Any person who wishes to claim privilege in respect of any thing sought to be seized or seized by a person executing a search warrant or exercising a search power—

(a) must provide the person responsible for executing the search warrant or exercising the other search power with a particularised list of the things in respect of which the privilege is claimed, as soon as practicable after being provided with the opportunity to claim privilege or being advised that a search is to be, or is being, or has been conducted, as the case requires:

(b) if the thing or things in respect of which the privilege is claimed cannot be adequately particularised in accordance with paragraph (a), may apply to a District Court for directions or relief (with a copy of the thing provided under clause 24(b)).

26 Admission of evidence

(1) If a District Court upholds a claim to privilege under clauses 22 to 25 in respect of any communication or information, the communication or information to which the privilege applies is not admissible in any proceedings arising from, or related to, the execution of the search warrant or exercise of the other search power, as the case requires.

(2) Subject to subsection (1), this schedule does not limit or affect the admissibility of any evidence, or the discretion of any court to admit or refuse to admit any evidence, in any proceedings.

Disposal of things seized

27 Disposal of things seized

(1) In any proceedings for an offence relating to any thing seized under a search warrant or the exercise of any other search power under this Act, the court may order, either at the trial or hearing or on an application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in any manner that the court thinks fit.

(2) The Bank or an investigator may, at any time, unless an order has been made under subclause (1), return the thing to the person from whom it was seized, or apply to a District Court Judge for an order for its disposal.

(3) On any such application, the District Court Judge may make any order that a court may make under subclause (1).

(4) If proceedings for an offence relating to the thing are not brought within a period of 3 months of seizure, any person claiming to be entitled to the thing may, after the expiry of that period, apply to a District Court Judge for an order that it be delivered to him or her.

(5) On any such application, the District Court Judge may—

(a) adjourn the application, on any terms that he or she thinks fit, for proceedings to be brought; or

(b) make any order that a court may make under subclause (1).

28 Court order for disposal of things seized to be suspended on conviction

(1) If any person is convicted in any proceedings for an offence relating to anything for which a search warrant has been issued, and any order is made under clause 27, the operation of the order is suspended,—

(a) in any case, until the expiration of the time prescribed by the Summary Proceedings Act 1957 for the filing of a notice of appeal or an application for leave to appeal; and

(b) if a notice of appeal is filed within the time so prescribed, until the determination of the appeal; and

(c) if application for leave to appeal is filed within the time so prescribed, until the application is determined, and, if leave to appeal is granted, until the determination of the appeal.

(2) If the operation of any such order is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order.

Immunities

29 Immunities in relation to the exercise of entry or search powers

(1) Every person is immune from civil or criminal liability—

(a) for any act done in good faith in order to obtain a search warrant:

(b) for any act done in good faith in relation to the execution of a search warrant, if the execution is carried out in a reasonable manner.

(2) Every person is immune from civil and criminal liability for any act done in good faith in order to exercise an entry power or search power if—

(a) the power is exercised by that person in a reasonable manner; and

(b) the person believes on reasonable grounds that the preconditions for the exercise of that power have been satisfied.

(3) Every person is immune from civil and criminal liability for any act done in good faith and in a reasonable manner in order to assist a person to exercise an entry power or a search power or in order to examine or analyse any thing that is seized.

(4) In any civil proceeding in which a person asserts that he or she has an immunity under this clause, the onus is on that person to prove those facts necessary to establish the basis of the claim.

30 Immunity of Bank

If any person is immune from civil liability under clause 29 in respect of anything done or omitted to be done, the Bank is also immune from civil liability in tort in respect of that person's conduct.

Offences

31 False application for search warrant

Every person commits an offence punishable on summary conviction by a term not exceeding 3 years who makes an application for a search warrant that contains any assertion or other statement known by the person to be false.

32 Offence of failing to carry out obligations in relation to computer search

Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding $2,000, or to both, who fails, without reasonable excuse, to assist a person exercising a search power when requested to do so under clause 17.

Schedule 3 s 219
Consequential amendments

Companies Act 1993 (1993 No 105)

Section 2(1): insert in its appropriate alphabetical order:

"**licensed insurer** has the same meaning as in section 6 of the Insurance (Prudential Supervision) Act 2009".

Section 223: insert after paragraph (d):

"(da) if an amalgamating company is a licensed insurer, a copy of the written consent of the Reserve Bank of New Zealand given under section 40 of the Insurance (Prudential Supervision) Act 2009; and".

Section 236: insert after subsection (2):

"(2A) If the arrangement or amalgamation or compromise involves a transfer or amalgamation that requires the written consent of the Reserve Bank of New Zealand under section 40 of the Insurance (Prudential Supervision) Act 2009, the Court may not make an order under this section unless that consent has been given."

New section 239EA: insert after section 239E:

"**239EA Voluntary administration of licensed insurers**

If a company is a licensed insurer, this Part applies in respect of the insurer subject to subpart 3 of Part 4 of the Insurance (Prudential Supervision) Act 2009."

Section 239L: add:

"(3) In the case of a licensed insurer, the Court may appoint an administrator on the application of the Reserve Bank of New Zealand or a person referred to in subsection (1) if—

"(a) subsection (2)(a) or (b) apply; or

"(b) the insurer is failing to maintain a solvency margin (within the meaning of section 57 of the Insurance (Prudential Supervision) Act 2009)."

New section 240A: insert after section 240:

"**240A Liquidation of licensed insurers**

If a licensed insurer may be put into liquidation under or in accordance with this Part, this Part applies in respect of the insurer subject to subpart 3 of Part 4 of the Insurance (Prudential Supervision) Act 2009."

Companies Act 1993 (1993 No 105)—*continued*

Section 241(2)(c): add:

"(vii) in the case of a licensed insurer, the Reserve Bank of New Zealand; or".

Section 258A: repeal and substitute:

"**258A Duty to report suspected offences**

"(1) A liquidator of a company who considers that an offence that is material to the liquidation has been committed by the company or any director of the company against this Act or any of the following Acts must report that fact to the Registrar:

"(a) the Crimes Act 1961:

"(b) the Securities Act 1978:

"(c) the Securities Markets Act 1988:

"(d) the Financial Reporting Act 1993:

"(e) the Takeovers Act 1993:

"(f) the Insurance (Prudential Supervision) Act 2009.

"(2) A report made under subsection (1), and any communications between the liquidator and Registrar relating to that report, are protected by absolute privilege.

"(3) If the company is a licensed insurer, a copy of the report made under subsection (1) must be sent to the Reserve Bank of New Zealand.

"(4) A copy of a report sent under subsection (3), and any communications between the liquidator and Reserve Bank of New Zealand relating to that report, are protected by absolute privilege.

"(5) A liquidator who fails to comply with subsection (1) or (3) commits an offence and is liable on conviction to the penalty set out in section 373(2)."

Section 373(2)(ma): repeal and substitute:

"(ma) section 258A(5) (which relates to the duty of liquidators to report suspected offences):".

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Section 8: repeal and substitute:

"**8 Consultation with Reserve Bank**

"(1) For the purposes of this section—

"**licensed insurer** means a licensed insurer within the meaning of the Insurance (Prudential Supervision) Act 2009

"**registered bank** means a registered bank within the meaning of section 2 of the Reserve Bank of New Zealand Act 1989.

"(2) The Registrar must consult with the Reserve Bank of New Zealand before—

"(a) giving a written notice requiring any licensed insurer or registered bank to supply any information under section 9:

"(b) appointing any person to carry out an investigation of the affairs of any licensed insurer or registered bank under section 19:

"(c) giving a written notice to any licensed insurer or registered bank that it is considered to be a corporation at risk.

"(3) The Securities Commission must consult with the Reserve Bank of New Zealand before making a recommendation to the Minister under section 38 in respect of any licensed insurer or registered bank."

Financial Reporting Act 1993 (1993 No 106)

Definition of **approved financial reporting standard** in section 2(1): repeal and substitute:

"**approved financial reporting standard**—

"(a) means a financial reporting standard approved by the Board under section 24; and

"(b) includes—

"(i) an amendment to an approved financial reporting standard that is approved by the Board under that section; and

"(ii) in the case of a licensed insurer, a solvency standard approved by the Reserve Bank of New Zealand under subpart 2 of Part 2 of the In-

Financial Reporting Act 1993 (1993 No 106)—*continued*

surance (Prudential Supervision) Act 2009 and an amendment to a solvency standard approved under that subpart".

Section 2(1): insert in its appropriate alphabetical order:

"**licensed insurer** has the same meaning as in section 6 of the Insurance (Prudential Supervision) Act 2009".

Section 4(1): insert after paragraph (d):

"(da) every licensed insurer:".

Section 16: insert after subsection (1):

"(1A) Section 77 of the Insurance (Prudential Supervision) Act 2009 applies in respect of a reporting entity that is a licensed insurer."

Section 35A: add:

"(6) The Securities Commission must not grant an exemption under this section in respect of an issuer that is a licensed insurer."

Financial Service Providers (Registration and Dispute Resolution) Act 2008 (2008 No 97)

Schedule 2: add:

Reserve Bank of New Zealand	Licensed insurers	Insurance (Prudential Supervision) Act 2009

Privacy Act 1993 (1993 No 28)

Part 1 of Schedule 2: insert in its appropriate alphabetical order:

Insurance (Prudential Supervision) Act 2009	Section 211

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Section 2(1): insert in its appropriate alphabetical order:

"**licensed insurer** has the same meaning as in section 6 of the Insurance (Prudential Supervision) Act 2009".

Section 39: insert "or the Insurance (Prudential Supervision) Act 2009" after "this Act".

Reserve Bank of New Zealand Act 1989 (1989 No 157)—*continued*

Section 41(1): add: "and the Insurance (Prudential Supervision) Act 2009".

Section 41(2): insert ", or the Insurance (Prudential Supervision) Act 2009," after "this Act".

Section 46(1)(b): insert "or of a licensed insurer" after "section 157C".

Section 49(2)(h)(iii): insert "or a licensed insurer" after "section 157C".

Section 50(2)(d)(iii): insert "or a licensed insurer" after "section 157C".

Section 51: add:

"(9) To avoid doubt, the Governor's functions and powers include his or her functions and powers under the Insurance (Prudential Supervision) Act 2009."

Section 53(3)(f)(iii): insert "or a licensed insurer" after "section 157C".

Section 58(b): insert "or a licensed insurer" after "bank".

Section 162AB(1)(a) and (b): insert "and the Insurance (Prudential Supervision) Act 2009" after "5D".