

# **New Zealand Captive Insurance Association**

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## **Summary of Reserve Bank Policy in Relation to Captive Insurance Companies**

1. The New Zealand Captive Insurance Association represents the 23 current captive insurance companies in New Zealand. While the majority of these companies are New Zealand owned (including Fonterra, Solid Energy and Air New Zealand), a growing number of them are New Zealand domiciled companies owned by foreign parents.
2. These companies underwrite \$80 million in gross premiums annually, have assets of \$135 million and pay New Zealand income tax of \$8 million. Captives invest significant amounts of capital in New Zealand banks and employ auditors, managers, lawyers, bankers, investment advisers and brokers within New Zealand. The industry makes a significant direct contribution to the New Zealand economy, and with appropriate regulation there is potential for significant industry growth.
3. On 20 April 2009, the Reserve Bank released its draft Insurance (Prudential Supervision) Bill (Bill) for stakeholders consultation. Clause 8(1)(c) of the Bill provides that a person carries on insurance business in New Zealand if the person is liable as an insurer under a contract of insurance to a policyholder in New Zealand. Clause 8(1)(c) has the effect that captive insurance companies domiciled in New Zealand that are owned by foreign shareholders, which have entered into captive insurance policies in New Zealand and which are subject to New Zealand law are "carrying on insurance business in New Zealand". This would allow foreign-owned captives to continue to be permitted to operate in New Zealand as licensed insurers.
4. However, Richard Dean, Reserve Bank Insurance Policy Manager, who leads the Bank's consultation on the proposed Bill, stated verbally to Matthew Andrews of Minter Ellison on 17 June 2009 that:
  - (a) Insurers have to be licensed to carry on insurance business in New Zealand;
  - (b) Insurers (including captive insurers) will not be licensed unless they have a high proportion of New Zealand policyholders, which officials aim to enforce through a combination of the Bill and license conditions;
  - (c) The Reserve Bank is looking to achieve this goal over a two year phase out period;
  - (d) The Reserve Bank does not wish for foreign companies to use New Zealand as a "flag of convenience" in setting up captive insurance companies.
5. The Reserve Bank's policy as explained verbally by Richard Dean is not clear from the Bill alone, and is inconsistent with current treatment of foreign-owned captive insurance companies in New Zealand. To the extent that Clause 8(1)(c) has any ambiguity, the consequence would leave captives unregulated rather than prohibited, which is the Bank's asserted policy.

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6. The Association supports the regulation of the captive insurance industry; however we believe that all captive insurers, regardless of where their policyholders are located, should be capable of being licensed to carry on insurance business in New Zealand.
7. If Reserve Bank policy is implemented (either through the Bill or through regulations and license conditions):
  - (a) no new foreign-owned captives will set up in New Zealand;
  - (b) the existing industry will wane with all current foreign-owned captives eliminated within 2 years of the Bill's enactment;
  - (c) New Zealand will lose millions in tax revenue; and
  - (d) both captive employees and professional advisers will lose jobs.
8. The Reserve Bank has not to date given a rational explanation for its policy, and we struggle to find sense in it, being that foreign-owned captives provide benefits to New Zealand with no obvious costs or risks. It is imperative that the Reserve Bank's policy does not become law either through the Bill or through secondary legislation. As a result of the Bank's stated policy objective of phasing foreign-owned captives out, the Bank's stance is already causing New Zealand businesses to advise reputable and significant overseas corporations which wish to establish captive businesses here that the regulatory outlook is too uncertain, notwithstanding the undoubted economic benefit businesses would bring to New Zealand.