

DRAFT FOR CONSULTATION

Insurance (Prudential Supervision) Amendment Bill

Government Bill

Explanatory note

General policy statement

[To come]

Departmental disclosure statement

The Reserve Bank of New Zealand is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at [to come].

Regulatory impact statement

The Reserve Bank of New Zealand produced a regulatory impact statement on 23 July 2025 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/consultations/insurers/ipsa-review/ipsa-decisions/regulatory-impact-statement-ipsa-review.pdf>
- <https://www.regulation.govt.nz/our-work/regulatory-impact-statements/>

Clause by clause analysis

[To come]

Hon Nicola Willis

Insurance (Prudential Supervision) Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Insurance (Prudential Supervision) Amendment Act **2026**.

2 Commencement

This Act comes into force on 1 July 2028.

3 Principal Act

This Act amends the Insurance (Prudential Supervision) Act 2010.

Part 1
Main amendments

4 Section 4 amended (Principles to be taken into account under this Act)

(1) Repeal section 4(c).

(2) After section 4(j), insert:

- (k) the desirability of taking a proportionate approach to regulation and supervision:
- (l) the desirability of maintaining awareness of, and responding to,—
 - (i) the practices of overseas supervisors that perform functions in relation to any licensed insurer or any holding entity of any licensed insurer; and
 - (ii) guidance or standards of international organisations.

5 Section 5 amended (Overview)

(1) Replace section 5(1)(d) with:

- (d) **Part 3A** contains provisions relating to enforcement, including provisions relating to undertakings, pecuniary penalties, offences, and banning orders:

(da) Part 4 contains provisions relating to distress management, including provisions relating to directions, liquidation or voluntary administration of insurers, and resolution:

- (2) In section 5(1)(e), delete “offences, banning orders,”.

6 Section 6 amended (Interpretation)

- (1) In section 6(1), definition of **appointed actuary**, replace paragraph (d) with:

(d) includes a person appointed as an actuary by the Bank under **clause 44 of Schedule 2**

- (2) In section 6(1), replace the definition of **derivative transaction** with:

derivative means a derivative within the meaning of section 8(4) of the FMCA

- (3) In section 6(1), replace the definition of **failing to maintain a solvency margin** with:

failing to maintain a prudential margin, in relation to an insurer or its New Zealand holding entity, means that the insurer or entity is failing to comply with—

- (a) a condition of the insurer’s licence that applies to the insurer or entity under **section 21(2)(ca)(i) or (cb)(i)**; or
- (b) an applicable standard under **section 56F(b)(i) or (c)(i)** (unless a condition applies under **paragraph (a)**)

failing to maintain a solvency margin, in relation to an insurer or its New Zealand holding entity, means that the insurer or entity is failing to comply with—

- (a) a condition of the insurer’s licence that applies to the insurer or entity under **section 21(2)(ca)(ii) or (cb)(ii)**; or
- (b) an applicable standard under **section 56F(b)(ii) or (c)(ii)** (unless a condition applies under **paragraph (a)**)

- (4) In section 6(1), definition of **fit and proper standard**, replace “section 36” with “**section 56G**”.

- (5) In section 6(1), insert in their appropriate alphabetical order:

applicable standard, in relation to a person, means a standard issued under **section 55** that applies to the person

business, operation, or management has the meaning set out in **section 121(5)**

chief risk officer means a person occupying the position of chief risk officer by whatever name called

dividend means,—

- (a) in the case of a company within the meaning of section 2(1) of the Companies Act 1993, a dividend within the meaning of section 53 of that Act; and
- (b) in any other case, a distribution of the income or gains of the entity to its shareholders or members that is comparable to a dividend referred to in **paragraph (a)**

fit and proper certificate means a certificate that complies with the requirements of an applicable standard referred to in **section 56G(1)(c)**

FMCA means the Financial Markets Conduct Act 2013

infringement fee, in relation to an infringement offence, means the infringement fee for the offence specified in the provision that identifies the infringement offence

infringement offence means an offence identified in this Act as being an infringement offence

licensed insurer group, in relation to a licensed insurer, means the licensed insurer and all of its holding entities and subsidiaries (if any)

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

- (a) the most senior officer of the insurer who is ordinarily resident in New Zealand (other than the New Zealand chief executive officer) who is responsible for oversight of risk management for the insurer; or
- (b) another person who may be nominated by the insurer and is agreed to in writing by the Bank

New Zealand holding entity means a holding entity of an insurer if the holding entity is incorporated in New Zealand

overseas licensed insurer means a licensed insurer that is an overseas person

prudential legislation has the same meaning as in section 5 of the Reserve Bank of New Zealand Act 2021

prudential obligation means an obligation imposed by or under any of the following:

- (a) this Act or the regulations:
- (b) the standards:
- (c) a condition of a licence:
- (d) a direction given under this Act:
- (e) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and regulations made under that Act

security interest means an interest in property created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to—

- (a) the form of the transaction; and
- (b) the identity of the person who has title to the collateral

standard means a standard issued under **section 55**

- (6) In section 6(1), definition of **investigator**, replace “section 130(2)(b)” with “**section 130(2)**”.
- (7) In section 6(1), definition of **relevant officer**, after paragraph (a)(ii), insert:
 - (ia) New Zealand chief risk officer:
- (8) In section 6(1), definition of **relevant officer**, after paragraph (b)(ii), insert:
 - (ia) chief risk officer:
- (9) In section 6(1), replace the definition of **solvency standard** with:

solvency standard means a standard issued under **section 56F**

7 Section 7 amended (Meaning of contract of insurance)

- (1) Replace section 7(1)(b) with:
 - (b) includes—
 - (i) a contract of reinsurance; and
 - (ii) a contract of a class, or a transaction of a class, that is declared by the regulations to be a contract of insurance for the purposes of this Act.
- (2) In section 7(3)(a), delete “transaction”.

8 Section 8 amended (Meaning of carrying on insurance business in New Zealand)

- (1) Replace section 8(1)(c) with:
 - (c) is liable as an insurer under a contract of insurance to—
 - (i) any policyholder (in the case of a person referred to in paragraph (a)(i) or (iv)); or
 - (ii) a New Zealand policyholder (in the case of a person referred to in paragraph (a)(ii) or (iii)).
- (2) After section 8(2)(e), insert:
 - (ea) a captive insurer if it is a body corporate incorporated outside New Zealand or an association of persons formed outside New Zealand; or
 - (eb) a reinsurer if—
 - (i) it is a body corporate incorporated outside New Zealand or an association of persons formed outside New Zealand; and

- (ii) the only New Zealand policyholders that it is liable to as an insurer are 1 or more licensed insurers; or

9 New section 13 inserted (Transitional, savings, and related provisions)

After section 12, insert:

Transitional, savings, and related provisions

13 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

10 Section 15 amended (Persons that carry on insurance business in New Zealand must be licensed)

Replace section 15(2) with:

- (2) A person (A) commits an offence if A—
 - (a) carries on insurance business in New Zealand without holding a licence; and
 - (b) knows that, or is reckless as to whether, it must hold a licence.
- (3) A person who commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 18 months or to a fine not exceeding \$300,000 (or both);
 - (b) in any other case, to a fine not exceeding \$2,500,000.

Compare: 2023 No 35 s 11

11 Section 16 replaced (Offence for person who is not licensed insurer to hold itself out to be licensed insurer)

Replace section 16 with:

16 No holding out as licensed

A person that is not licensed as an insurer must not, directly or indirectly, hold out that the person is a licensed insurer.

Compare: 2023 No 35 s 13

16A Offence for holding out

- (1) A person (A) commits an offence if A—
 - (a) contravenes **section 16**; and
 - (b) knows that, or is reckless as to whether, what they are holding out is not the case.
- (2) A person that commits an offence against this section is liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 18 months or to a fine not exceeding \$300,000 (or both):
- (b) in any other case, to a fine not exceeding \$2,500,000.

Compare: 2023 No 35 s 14

12 Section 17 amended (Application for licence as insurer)

- (1) After section 17(2), insert:
 - (2A) *See sections 233 to 236B* (which provides for the Bank’s power to specify the manner in which an application is made).
- (2) Replace section 17(4) with:
- (4) An applicant commits an offence if it provides information to the Bank for the purposes of an application that is false or misleading in any material particular, and is liable, on conviction, to a fine not exceeding \$1,500,000.

13 Section 18 repealed (Applicant must provide fit and proper policy, fit and proper certificate, and risk management programme)

Section 18 is repealed.

14 Section 19 amended (Entitlement to licence)

- (1) Replace section 19(1)(a) to (h) with:
 - (a) the applicant has the ability to comply with the prudential obligations (including prudential obligations that the Bank proposes to impose if it issues the licence); and
 - (b) the applicant’s directors, relevant officers, and proposed directors and relevant officers are fit and proper persons to hold their respective positions; and
- (2) Repeal section 19(1)(l).
- (3) In section 19(2) replace “For the purposes of subsection (1)(c) and (d)” with “For the purposes of considering the applicant’s ability to comply with subpart 2 and (if applicable) subpart 3”.

15 Section 20 repealed (Carrying on business in prudent manner)

Repeal section 20.

16 Section 21 amended (Conditions of licence)

- (1) Replace section 21(2)(a) to (c) with:
 - (a) a condition that identifies the standards that a licensed insurer, its New Zealand holding entity, or both must comply with:
 - (b) a condition that identifies requirements in standards that apply to a licensed insurer, its New Zealand holding entity, or both:

- (c) a condition that provides for anything that the standards say may or must be provided for by conditions:
- (ca) a condition that requires a licensed insurer, its New Zealand holding entity, or both to maintain either or both of the following (including requiring the insurer or holding entity to maintain a minimum amount of capital):
- (i) a prudential margin:
 - (ii) a solvency margin:

Guidance note

A particular margin imposed under a condition applies instead of a margin that would otherwise apply under a solvency standard.

- (cb) a condition that requires a life insurer to maintain either or both of the following in respect of the statutory funds of the insurer (including requiring the insurer to maintain a minimum amount of capital):
- (i) a prudential margin:
 - (ii) a solvency margin:

Guidance note

A particular margin imposed under a condition applies instead of a margin that would otherwise apply under a solvency standard.

- (2) Replace section 21(2)(f) with:

- (f) a condition that requires licensed insurer or the directors of the insurer (or both) to certify that any of the following have been complied with (being certification that is given at the time or times and in the manner specified in the condition):
- (i) any prudential obligations of the insurer:
 - (ii) any requirements of any other legislation imposed on the insurer as a licensed insurer (for example, financial reporting obligations):
- (fa) a condition that requires the New Zealand holding entity of the licensed insurer or the directors of the New Zealand holding entity (or both) to certify that any of the following have been complied with (being certification that is given at the time or times and in the manner specified in the condition):
- (i) any prudential obligations of the holding entity:
 - (ii) any requirements of any other legislation imposed on the holding entity as a holding entity:

- (3) Replace section 21(3) and (4) with:

- (3) **Subsection (2)(cb)** does not limit **subsection (2)(ca)**.

- (4) A condition under **subsection (2)(ca) or (cb)** may—
- (a) specify the amount of a prudential or solvency margin; or
 - (b) set the level of a prudential or solvency margin by means of a ratio, percentage of another amount, or in any other way.
- (5) *See* **subpart 2 of Part 3A**, which provides for the High Court to impose a pecuniary penalty for a contravention of a condition.

17 Section 23 repealed (Offence to fail to comply with conditions of licence)

Repeal section 23.

18 Section 24 replaced (Licensed insurer must report likely failure to comply with solvency margin imposed under licence conditions)

Replace section 24 with:

24 Licensed insurer must report likely failure to comply with prudential or solvency margin

- (1) This section applies if a licensed insurer has reasonable grounds to believe that either or both of the following are likely to occur at any time within the next 3 years:
 - (a) a failure to maintain a prudential margin;
 - (b) a failure to maintain a solvency margin.
- (2) The insurer must report the likely failure to the Bank as soon as is reasonably practicable.
- (3) A licensed insurer that, without reasonable excuse, fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$1,500,000.

19 Sections 26 to 29 and cross-heading above section 26 repealed

Repeal sections 26 to 29 and the cross-heading above section 26.

20 Cross-heading above section 30 amended

In the cross-heading above section 30, after “*licence*”, insert “*and facilitating local incorporation*”.

21 Section 30 amended (Cancellation of licence)

- (1) Repeal section 30(1)(a)(iv) and (v) and (4).
- (2) Replace section 30(3)(a) with:
 - (a) notice of the cancellation on the Bank’s Internet site; and

22 Section 31 amended (Assignment of liabilities to enable cancellation)

- (1) In the heading to section 31, after “**cancellation**”, insert “**or facilitate local incorporation**”.

- (2) Replace section 31(1) with:
- (1) The Bank may direct a licensed insurer to arrange, subject to the Bank’s approval under section 32, to assign its liabilities under contracts of insurance of the kind specified in the direction to 1 or more other licensed insurers if either or both of the following apply:
- (a) the Bank considers that it would, under section 30, 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;
 - (b) the Bank considers that the direction is necessary or desirable in order to facilitate compliance with a standard under **section 56E(1)(b)(ii)** (for example, to ensure that an overseas insurer ceases to carry on its business, or any part of its business, in New Zealand).
- (3) Replace section 31(3) with:
- (3) Subsections (1) and (2) have effect despite **subpart 1A** (which requires the Bank’s approval for certain changes).
- (4) In section 31(5), replace “\$500,000” with “\$1,500,000”.

23 Sections 34 to 43 replaced

Replace sections 34 to 43 with:

34 Licensed insurer must obtain Bank’s approval before new director or relevant officer is appointed

- (1) A licensed insurer must obtain the approval of the Bank before a new director or relevant officer is appointed.
- (2) A request for the Bank to give its approval must—
- (a) contain or be accompanied by a fit and proper certificate for the new director or relevant officer; and
 - (b) otherwise be made in the manner that is specified by the Bank.
- (3) This section does not apply in relation to—
- (a) a person who is appointed as a relevant officer on an interim basis if the terms and conditions specified under **section 56G(1)(f)** are complied with; or
 - (b) an overseas licensed insurer (*see instead section 38*).

Compare: 2023 No 35 s 26

35 Offence to appoint new director or relevant officer without approval

A licensed insurer that contravenes **section 34(1)** commits an offence and is liable on conviction to a fine not exceeding \$500,000.

Compare: 2023 No 35 s 27

36 Bank's decision on approval

- (1) The Bank may, after considering a request for approval under **section 34**,—
 - (a) give its approval unconditionally or subject to any conditions that the Bank thinks fit; or
 - (b) refuse to give its approval.
- (2) The Bank must give notice of its decision to the licensed insurer within 20 working days after receiving all of the information that the Bank reasonably requires to assist it in determining whether to give its approval.
- (3) If the Bank refuses to give its approval or its approval is subject to conditions, the notice under **subsection (2)** must contain a statement of its reasons.

Compare: 2023 No 35 s 28

37 Bank may suspend director or relevant officer if approval not obtained

- (1) If a licensed insurer fails to comply with **section 34** in relation to a director or relevant officer (**B**), the Bank may make an order prohibiting or restricting B, without the leave of the Bank, from either or both of the following:
 - (a) acting as a director of the insurer;
 - (b) being concerned in, or taking part in the management of, the insurer.
- (2) The order ceases to be in force if the Bank approves the appointment.
- (3) If B knowingly fails to comply with the order, B commits an offence and is liable on conviction to imprisonment for a term not exceeding 9 months or to a fine not exceeding \$100,000 (or both).
- (4) *See also subpart 5 of Part 3A*, which allows the District Court to make a banning order if B fails to comply with the Bank's order.

Compare: 2023 No 35 s 29

38 Overseas licensed insurer must notify Bank if new director or relevant officer is appointed

- (1) An overseas licensed insurer must, no later than 20 working days after the appointment of a new director or relevant officer, provide to the Bank a fit and proper certificate for the new director or relevant officer.
- (2) An overseas licensed insurer that contravenes **subsection (1)** commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

Compare: 2023 No 35 s 30

38A Bank may exempt overseas insurers from compliance with section 38(1)

- (1) The Bank may, by notice to an overseas insurer, exempt the insurer from compliance with **section 38(1)** to the extent that it relates to the directors of the insurer.
- (2) The Bank must, before granting an exemption, be satisfied that the law or regulatory requirements of the home jurisdiction of the insurer—
 - (a) provide for the assessment by an overseas supervisor of whether the persons who are appointed as directors of the insurer are fit and proper persons to be appointed to that position; and
 - (b) provide for the removal of a person from being a director of the insurer if the overseas supervisor considers that the person is not a fit and proper person to hold the relevant position.
- (3) The matters in **subsection (2)** must be treated as being satisfied in respect of an overseas insurer that is incorporated in a jurisdiction that is prescribed for the purposes of this subsection.
- (4) This section is subject to section 232 (which provides for general provisions relating to exemptions).

39 Bank may require further fit and proper certificate

- (1) If the Bank has given a notice to a licensed insurer that requires it to give to the Bank a fit and proper certificate for a specified director or relevant officer, the insurer must, in the manner specified by the Bank, comply with the requirement.
- (2) This section applies whether or not a certificate in respect of the director or officer has previously been provided under this subpart.
- (3) A licensed insurer that contravenes **subsection (1)** commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

Compare: 2023 No 35 s 31

40 Insurer's duty on becoming aware of fit and proper concerns

- (1) This section applies if a licensed insurer becomes aware of information on the basis of which it could reasonably form the opinion that a director or relevant officer of the insurer is not, or is not likely to be, a fit and proper person to hold the relevant position.
- (2) The insurer must, as soon as practicable, disclose to the Bank all information relevant to that matter that is in the possession or under the control of the insurer.
- (3) In forming an opinion under **subsection (1)**, the licensed insurer must have regard to the fit and proper matters specified in an applicable standard.

- (4) In this section, **director or relevant officer** of the insurer includes a proposed new director or relevant officer in respect of whom the insurer has requested approval under **section 34**.

Compare: 2023 No 35 s 32

41 Offence to fail to disclose fit and proper concerns

A licensed insurer that, without reasonable excuse, contravenes **section 40** commits an offence and is liable on conviction to a fine not exceeding \$250,000.

Compare: 2023 No 35 s 33

42 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 an applicable standard, 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) The Bank may remove the director or relevant officer from the relevant position from a date specified by the Bank.

Compare: 2023 No 35 s 34

43 Bank may direct that person may not be reappointed

If the Bank acts under **section 42**, 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).

Compare: 2023 No 35 s 35

43A Offence to contravene direction

- (1) A licensed insurer that reappoints a person as a director or relevant officer in contravention of a direction under **section 43** commits an offence and is liable on conviction to a fine not exceeding \$500,000.

- (2) A person who has been removed as a director or manager under **section 42** commits an offence if they accept reappointment to a position in contravention of a direction under **section 43**.

- (3) A person who commits an offence against **subsection (2)** is liable on conviction to a fine not exceeding \$100,000.

Compare: 2023 No 35 s 36

43B Further provisions about power to remove

- (1) **Sections 42 and 43** apply whether or not the director or relevant officer is a fit and proper person to hold their position under the licensed insurer's fit and proper policy.
- (2) **Sections 42 and 43** do not apply to a director of an overseas insurer.
- (3) **Sections 42 and 43** have effect despite any agreement, legislation, or rule of law, or the terms of the constitution of a licensed insurer.

Compare: 2023 No 35 s 37

43C How power to remove is exercised

- (1) The Bank must, before exercising a power under **section 42**,—
 - (a) give the licensed insurer and the director or relevant officer not less than 7 days' notice of the Bank's intention to do so; and
 - (b) give the licensed insurer and the director or relevant officer a reasonable opportunity to make submissions to the Bank; and
 - (c) have regard to those submissions.
- (2) The notice given to the insurer and the director or relevant officer must contain, or be accompanied by, a statement of the Bank's reasons for proposing to exercise the power.
- (3) The Bank must exercise the powers conferred by **sections 42 and 43** by giving notice 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.
- (4) A notice given under **subsection (3)(c)** is sufficient compliance with section 159 of the Companies Act 1993.

24 Sections 44 to 53 and cross-heading above section 44 replaced

Replace sections 44 to 53 and the cross-heading above section 44 with:

Subpart 1A—Bank's approval required for certain changes

*Obtaining significant influence***44 Person who obtains significant influence over licensed insurer must obtain Bank's approval**

- (1) A person (A) must obtain the approval of the Bank before giving effect to a transaction if the transaction would result in A obtaining significant influence over a licensed insurer.
- (2) In this section and **section 45**, a person (A) **obtains significant influence** over a licensed insurer if—

- (a) A obtains the power (whether directly or indirectly) to—
 - (i) exercise, or control the exercise of, 25% or more of the voting rights in the insurer; or
 - (ii) appoint 50% or more of the directors of the insurer;
 - (b) A obtains, together with 1 or more specified persons, the power (whether directly or indirectly) to—
 - (i) exercise, or control the exercise of, 25% or more of the voting rights in the insurer; or
 - (ii) appoint 50% or more of the directors of the insurer.
- (3) In this section and **section 45**, **specified person**, in relation to A, means—
- (a) a person who is acting or will act jointly or in concert with A in respect of exercising, or controlling the exercise of, a power referred to in **subsection (2)(b)(i) or (ii)**; or
 - (b) a person who acts, or is accustomed to acting, in accordance with the wishes of A.
- (4) **Subsection (1)** does not apply in relation to an overseas licensed insurer (*see instead section 45*).

Compare: 2023 No 35 s 39

45 Overseas licensed insurer must notify Bank if person obtains significant influence

- (1) If a person (**A**) gives effect to a transaction that results in A obtaining significant influence over an overseas licensed insurer (**B**), B must give the Bank written notice of that matter within 20 working days after B becomes aware that A has obtained that influence.
- (2) The notice must specify the following information (to the extent that B is aware of the information):
 - (a) A's name and the names of any specified persons; and
 - (b) the nature and extent of the power referred to in **section 44** that A (or A together with 1 or more specified persons) may exercise or control; and
 - (c) the date on which A obtained the significant influence.
- (3) An overseas licensed insurer that contravenes **subsection (1)** commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

Compare: 2023 No 35 s 40

*Change of corporate form***46 Change of corporate form**

A licensed insurer must obtain the approval of the Bank before it changes its corporate form (for example, as a result of demutualisation).

*Significant transactions***47 Licensed insurer must obtain Bank's approval before entering into significant transaction**

- (1) A licensed insurer must obtain the approval of the Bank before entering into a significant transaction.
- (2) In this Act, **significant transaction** means any of the following:
 - (a) in the case of an overseas insurer,—
 - (i) the transfer of all or a material part of the insurer's New Zealand insurance business to—
 - (A) another person; or
 - (B) 2 or more persons who are associated with each other; or
 - (ii) the acquisition of all or part of a New Zealand insurance business that, immediately after the acquisition, will be a material part of the overseas's insurer's New Zealand business:
 - (b) in the case of any other insurer,—
 - (i) the transfer of all or a material part of the insurer's insurance business to—
 - (A) another person; or
 - (B) 2 or more persons who are associated with each other; or
 - (ii) the acquisition of all or part of an insurance business that, immediately after the acquisition, will be a material part of the insurer's insurance business:
 - (c) any other transaction of a kind that is specified in an applicable standard as a significant transaction in respect of which approval is required under this subpart.
- (3) Whether a part of a business is **material** must be determined in accordance with an applicable standard.

Compare: 2023 No 35 s 41

*Amalgamation***48 Licensed insurer must obtain Bank's approval before amalgamation**

- (1) A licensed insurer must obtain the approval of the Bank before the insurer amalgamates with another person (whether it occurs under Part 13 of the Com-

panies Act 1993 or any other law of similar effect that results in 2 or more entities amalgamating and continuing as 1 entity).

- (2) In this subpart, **amalgamated entity** means the single entity that is proposed to result from and continue after a proposed amalgamation.
- (3) **Subsection (1)** does not apply in relation to an overseas licensed insurer (*see instead section 49*).

Compare: 2023 No 35 s 42

49 Overseas licensed insurer must notify Bank if it amalgamates with another person

- (1) If an overseas licensed insurer (A) amalgamates with another person (under a law that results in 2 or more entities amalgamating and continuing as 1 entity), A must give the Bank written notice of the amalgamation within 20 working days after it takes effect.
- (2) The notice must specify—
 - (a) the names of each amalgamating entity and the amalgamated entity; and
 - (b) the date of the amalgamation.
- (3) An overseas licensed insurer that contravenes this section commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

Compare: 2023 No 35 s 43

50 Provisions do not apply in certain cases

Sections 47 to 49 do not apply to a transfer or an amalgamation under **section 31**, sections 164 to 167, **subparts 4 to 8** of Part 4, section 207(5), or **Schedule 2**.

Consequences of failing to get approval

51 Offence to fail to get approval

- (1) A person (A) commits an offence if A—
 - (a) contravenes **section 44 or 46 to 48**; and
 - (b) knows that, or is reckless as to whether, it must obtain the Bank's approval under that section.
- (2) A person that commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 9 months or to a fine not exceeding \$100,000 (or both);
 - (b) in any other case, to a fine not exceeding \$1,500,000.

Compare: 2023 No 35 s 44

52 Failure to get approval does not invalidate proposed change

Nothing in this subpart invalidates any change in significant influence over a licensed insurer, change in corporate form, significant transaction, or amalgamation made without the approval of the Bank.

Compare: 2023 No 35 s 45

*Process for approval***53 Meaning of proposed change**

In this subpart, **proposed change** means any of the following in respect of which approval is required under this subpart:

- (a) the obtaining of significant influence over a licensed insurer:
- (b) the changing of corporate form:
- (c) the entering into of a significant transaction:
- (d) the amalgamation of a licensed insurer with 1 or more other persons.

Compare: 2023 No 35 s 46

53A Request for approval

- (1) A request for the Bank to give its approval under this subpart must be made in the manner that the Bank specifies.
- (2) A joint request may be made by 2 or more persons that are parties to the proposed change.

Compare: 2023 No 35 s 47

53B Report on proposal

- (1) The Bank may arrange for an independent actuary or any other suitably qualified person (**B**) to prepare a report on a proposed change to assist the Bank with performing or exercising its functions, powers, or duties under this subpart.
- (2) A person that makes a request and every other party to the proposed change must provide to B the information that B requires to assist them in preparing the report.

Compare: 2023 No 35 s 48

53C Bank must consider whether it would still be satisfied of licensing matters

- (1) The Bank must, in considering a request for approval under this subpart, consider whether, if the proposed change occurs, the Bank would still be satisfied of the matters set out in section 19 (which are the matters that the Bank must be satisfied of before an applicant is entitled to be issued with a licence)
- (2) In the case of a significant transaction referred to in **section 47(2)(a) or (b)** or an amalgamation referred to in **section 48**, the Bank must also have regard

to the interests of the policyholders of the insurers that are parties to the proposed significant transaction or amalgamation.

Compare: 2023 No 35 s 49

53D Bank's decision on approval

- (1) The Bank may, after considering a request for approval under this subpart,—
 - (a) give its approval unconditionally or subject to any conditions that the Bank may impose under **subsection (3)**; or
 - (b) refuse to give its approval.
- (2) The Bank must give notice of its decision to the licensed insurer and any other person who made the request within 20 working days after receiving both of the following:
 - (a) all of the information that the Bank reasonably requires to assist it in determining whether to give its approval:
 - (b) all reports that the Bank has arranged to receive under this subpart in respect of the matter.
- (3) The approval may be subject to any conditions prescribed by the regulations or conditions that relate to matters prescribed in the regulations.
- (4) If the Bank refuses to give its approval, the notice under **subsection (2)** must contain a statement of its reasons for doing so.

Compare: 2023 No 35 s 50

53E Offence to contravene condition of approval

A person that contravenes a condition of approval imposed under **section 53D** commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$100,000;
- (b) in any other case, to a fine not exceeding \$1,500,000.

Compare: 2023 No 35 s 51

53F Requirement for approval is in addition to other requirements

This subpart does not limit any other legislation that must be complied with in order to give effect to a proposed change that requires approval under this subpart (for example, in the case of amalgamating companies, the requirements of Part 13 of the Companies Act 1993).

Compare: 2023 No 35 s 52

53G Effect of assignment for purposes of approved transfer

- (1) If the Bank approves a transfer of all or part of an insurance business under this subpart and, for the purposes of the transfer, a licensed insurer (the **first insurer**) accepts an assignment of liabilities from another licensed insurer (the **second insurer**), 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.
- (2) An agreement between the first insurer and the second insurer may, with the Bank's approval, allocate liabilities in respect of the transferring contracts (and that agreement is binding on the first insurer, the second insurer, and the policyholders under those contracts).
- (3) **Subsection (1)** is subject to **subsection (2)**.

25 Cross-heading above section 54A replaced

Replace the cross-heading above section 54A with:

Subpart 1B—Register

26 New subpart 1C of Part 2 inserted

After section 54A, insert:

Subpart 1C—Appeals

54B Appeals against licensing and fit and proper decisions

A person may appeal to the High Court against a decision of the Bank under this Part to—

- (a) decline to issue a licence to the person; or
- (b) decline to approve the person as a director or relevant officer under subpart 1; or
- (c) remove the person as a director or relevant manager under subpart 1.

Compare: 2023 No 35 s 56

54C Appeals against other decisions of Bank on questions of law only

A person that considers that any of the following decisions of the Bank is wrong in law may appeal to the High Court against the decision on a question of law only:

- (a) a decision to impose conditions on the person's licence or proposed licence or to vary, revoke, add to, or substitute any conditions on the person's licence; or
- (b) a decision to decline to give an approval under **subpart 1A**.

Compare: 2023 No 35 s 57

54D Appeal does not operate as stay

An appeal under this subpart does not operate as a stay of any decision appealed against unless the High Court orders otherwise.

Compare: 2023 No 35 s 58

27 Sections 55 to 59 and cross-heading above section 55 replaced

Replace sections 55 to 59 and the cross-heading above section 55 with:

Bank may issue standards

55 Bank may issue standards

- (1) The Bank may, in accordance with this Part, issue standards if the Bank is satisfied that the standards are necessary or desirable for 1 or more of the purposes of this Act.
- (2) Standards issued under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2023 No 35 s 72

56 Insurer and New Zealand holding entity must comply with applicable standards

- (1) An insurer must comply with all applicable standards.
- (2) A New Zealand holding entity must comply with all applicable standards.
- (3) *See* **subpart 2 of Part 3A**, which provides for a court to impose a pecuniary penalty for a contravention of an applicable standard.

Compare: 2023 No 35 s 73

56A Application of standards

- (1) A standard may do 1 or more of the following:
 - (a) apply to all insurers, a particular insurer, or a class of insurers:
 - (b) apply to all New Zealand holding entities, a particular New Zealand holding entity, or a class of those persons (in the case of standards under any of **sections 56E, 56F, 56H to 56K, or 56M(2) or (4)**):
 - (c) apply in all circumstances, particular circumstances, or a class of circumstances.
- (2) A standard may provide for either or both of the following (*see* **section 21(2)(a) and (b)**):

- (a) the standard to apply to a licensed insurer, its New Zealand holding entity, or both if a condition of the insurer's licence states that the standard applies;
 - (b) a requirement of the standard to apply to a licensed insurer, its New Zealand holding entity, or both if a condition of the insurer's licence states that the requirement applies.
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) If a matter referred to in any of **sections 56B to 56M** is specified as including certain specific matters, those specific matters do not limit the matter referred to.

Compare: 2023 No 35 s 74

Procedural matters for standards

56B Procedure for issuing standards

- (1) Before issuing a standard (the **proposed standard**), the Bank must—
- (a) notify the Minister of the prudential policy that the Bank intends to implement through the proposed standard; and
 - (b) consult the other members of the Council of Financial Regulators continued under subpart 4 of Part 6 of the Reserve Bank of New Zealand Act 2021; and
 - (c) consult the persons, or representatives of the persons, that the Bank considers will be substantially affected by the issue of the proposed standard; and
 - (d) in the case of a solvency standard, have regard to relevant overseas standards for the purpose of ensuring that the proposed standard does not apply, in respect of a particular insurer, in an unreasonable manner (as compared to other insurers) as a result of the insurer being incorporated in New Zealand or some other jurisdiction.

Guidance note

See *also* section 49 of the Reserve Bank of New Zealand Act 2021, which requires the board of the Bank to have regard to the financial policy remit when the Bank is issuing standards.

- (2) In **subsection (1)(d)**, **relevant overseas standards** means standards relating to solvency or capital that—
- (a) relate to matters that are the same as, or similar to, those that are covered by the proposed solvency standard; and
 - (b) apply to insurers in the home jurisdictions of the overseas insurers to which the proposed solvency standard will apply.

- (3) A failure to comply with this section does not affect the validity of any standard.

Compare: 2023 No 35 s 75

56C When procedural requirements do not apply

- (1) **Section 56B(1)(a)** does not apply if—
- (a) the proposed standard will apply only to a particular licensed insurer (or a particular New Zealand holding entity); or
 - (b) the Bank is satisfied that the prudential policy is of a minor or technical nature only.
- (2) **Section 56B(1)(b) and (c)** does not apply to a standard that amends another standard if the Bank is satisfied that the amendment—
- (a) is only correcting a minor error; or
 - (b) is otherwise of a minor or technical nature only.

Compare: 2023 No 35 s 76

Proportionality framework

56D Bank must prepare and publish framework for taking proportionality principle into account when developing standards

- (1) The Bank must—
- (a) prepare and keep up to date a proportionality framework; and
 - (b) publish a copy of the framework on the Bank’s Internet site.
- (2) The proportionality framework must set out how the Bank takes into account, or proposes to take into account, the principle under **section 4(k)** when it is developing standards.

Guidance note

The principle under **section 4(k)** relates to the desirability of taking a proportionate approach to regulation and supervision.

- (3) When preparing the proportionality framework, the Bank must have regard to the following:
- (a) the size and nature of the businesses of different licensed insurers (or of New Zealand holding entities):
 - (b) the extent to which a range of different requirements are necessary or desirable to—
 - (i) promote the maintenance of a sound and efficient insurance sector; and
 - (ii) promote public confidence in the insurance sector.

- (4) Before publishing the proportionality framework, the Bank must consult the persons, or representatives of the persons, that the Bank considers will be substantially affected by the framework.

Compare: 2023 No 35 s 77

Subject matter of standards

56E Governance, incorporation structure, and ownership

- (1) A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:
- (a) the governance of an insurer, a New Zealand holding entity, or both, including—
 - (i) the organisational structure of the insurer or holding entity; and
 - (ii) the structure of the licensed insurer group; and
 - (iii) the composition, size, and structure of the governing body of the insurer or holding entity; and
 - (iv) the responsibilities of that governing body, of committees of that body, and of the management of the insurer or holding entity;
 - (b) the incorporation structure of an insurer, a New Zealand holding entity, or both, including matters relating to—
 - (i) an insurer's or a holding entity's constitution (including prohibiting or restricting provisions that may be included in a constitution or requiring a constitution to include specified provisions); and
 - (ii) whether an insurer must be incorporated under New Zealand legislation;
 - (c) the ownership structure of an insurer and its ownership;
 - (d) the ownership structure of a New Zealand holding entity and its ownership.
- (2) A standard under **subclause (1)(b)(ii)** may do 1 or more of the following:
- (a) prohibit or restrict the extent to which an overseas insurer may carry on its business in New Zealand;
 - (b) require an overseas insurer to cease to carry on its business, or any part of its business, in New Zealand.

Example

A standard prohibits an overseas insurer from carrying on insurance business in New Zealand in excess of certain thresholds.

To facilitate compliance with the standard, the Bank may direct the overseas insurer to assign liabilities relating to its New Zealand business to 1 or more

licensed insurers. See sections 31 to 33. The Bank may also direct the insurer to cease entering into any new contracts of insurance under sections **143** and **144**.

Compare: 2023 No 35 s 78

56F Solvency

A standard (a **solvency standard**) may regulate, deal with, or otherwise relate to 1 or more of the following matters:

- (a) the minimum amount of capital that an insurer, a New Zealand holding entity, or both must hold and maintain:
- (b) requiring a licensed insurer, a New Zealand holding entity, or both to maintain either or both of the following:
 - (i) a prudential margin:
 - (ii) a solvency margin:
- (c) requiring a life insurer to maintain either or both of the following in respect of the statutory funds of the insurer (including requiring the insurer to maintain 1 or more minimum amounts of capital):
 - (i) a prudential margin:
 - (ii) a solvency margin:
- (d) for the purposes of **paragraphs (a) to (c) and section 21(2)(ca) and (cb)**, the methods for determining or calculating the amount of capital that an insurer or holding entity must hold and maintain (whether by reference to a specified formula, framework, or amount, a combination of specified formulae, frameworks, or amounts, or otherwise):
- (e) the methods for determining or calculating a prudential margin or solvency margin (whether by reference to a specified formula, framework, or amount, a combination of specified formulas, frameworks, or amounts, or otherwise):
- (f) the methods for determining whether, and the extent to which, a prudential margin or solvency margin is being maintained:
- (g) requirements relating to reports about the financial condition of a licensed insurer, a New Zealand holding entity, or both and other reports relating to the solvency of the insurer or holding entity (including requirements relating to the information that must be contained in the reports, who must prepare the reports, how often the reports must be prepared, other matters concerning the preparation of reports, to whom the reports must be provided, and when the reports must be provided):
- (h) for the purposes of any of **paragraphs (a) to (g)**,—
 - (i) the methods for estimating or valuing the assets or liabilities (or both) of an insurer or a New Zealand holding entity:

- (ii) the assets of an insurer or a New Zealand holding entity that must be disregarded (in whole or in part) for the purposes of estimating or valuing the assets of an insurer or a holding entity:
- (i) for the purposes of any of **paragraphs (a) to (g)**, any other matters relating to the assessment, or disclosure, of—
 - (i) whether, and the extent to which, the value of an insurer's or a New Zealand holding entity's assets exceeds the value of its liabilities (including contingent liabilities); or
 - (ii) whether an insurer or a New Zealand holding entity 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 or solvency of an insurer or a New Zealand holding entity.

56G Fit and proper requirements

- (1) A standard may regulate, deal with, or otherwise relate to matters to ensure that only a fit and proper person may be appointed to, and continue to hold, a position as a director or relevant officer, including—
 - (a) specifying the matters that are relevant to the consideration of whether a person is a fit and proper person to be appointed to, and continue to hold, a position as a director or relevant officer; and
 - (b) specifying the information that must be provided to the Bank when seeking the Bank's approval of the appointment of a director or relevant officer; and
 - (c) specifying the contents of fit and proper certificates; and
 - (d) imposing requirements for establishing, implementing, maintaining, and complying with a policy for the purpose of ensuring that only fit and proper persons are appointed to, and continue to hold, positions as directors or relevant officers (a **fit and proper policy**); and
 - (e) imposing requirements for reassessing whether a director or relevant officer is a fit and proper person to continue to hold their position; and
 - (f) specifying, for the purposes of **section 34(3)(a)**, terms and conditions in connection with a relevant officer who is appointed on an interim basis (for example, a term or condition relating to the permitted period of appointment and requirements that must be complied with before the person is appointed).
- (2) A standard for a fit and proper policy may (without limitation) require the policy to do 1 or more of the following:
 - (a) specify the qualifications, requirements, and other criteria for a particular position, including matters relating to a person's character, competence, and experience relative to the duties of the position:

- (b) contain provisions to encourage any person to disclose information to the insurer or the Bank that may be relevant to a fit and proper assessment:
- (c) contain provisions for giving or obtaining any consents required for the collection and use of any information by—
 - (i) the insurer to comply with the policy or **sections 34 to 43C**; and
 - (ii) the Bank for the performance or exercise of its functions, powers, or duties in connection with the policy.

Compare: 2023 No 35 s 81

56H Risk management and business continuity planning

A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:

- (a) the management by an insurer, a New Zealand holding entity, or both of 1 or more of the following risks (including policies and processes to identify, measure, evaluate, monitor, report on, control, and mitigate those risks):
 - (i) insurance risk:
 - (ii) operational risk (including cybersecurity risk):
 - (iii) credit risk:
 - (iv) liquidity risk:
 - (v) asset concentration risk:
 - (vi) market risk:
- (b) policies and processes for business continuity planning.

Compare: 2023 No 35 s 85

56I Disclosure of information

- (1) A standard may regulate, deal with, or otherwise relate to the disclosure of information to the Bank, the public, or any other person or class of persons (a **disclosure standard**).
- (2) A disclosure standard may (without limitation)—
 - (a) provide for when and how disclosure information must be published, provided, or otherwise made available, including providing for any of the following:
 - (i) any document of the kind that is specified in the standard and that is required by any relevant legislation to contain, be amended to contain, or be accompanied by the disclosure information:
 - (ii) any other communication of the kind that is specified in the standard to contain, or be accompanied by, the disclosure information:

- (iii) a symbol to be used in the circumstances specified in the standard; and
 - (b) provide to whom the disclosure information must be published, provided, or otherwise made available (for example, the Bank, the insurer's policyholders, a particular class of those policyholders, the public, or a particular class of the public); and
 - (c) prescribe the information that must, or must not, be disclosed in the disclosure information, including requiring the disclosure of information about any of the following in connection with a licensed insurer, a New Zealand holding entity, or a licensed insurer group:
 - (i) governance and other corporate matters:
 - (ii) financial matters (for example, the insurer's or holding entity's financial condition, solvency, and performance):
 - (iii) risk exposure and risk management:
 - (iv) prudential matters:
 - (v) actuarial matters:
 - (vi) any other matters relating to the business, operation, and management of the insurer, holding entity, or licensed insurer group; and
 - (d) prohibit or restrict the use in disclosure information of prescribed words, information, sounds, images, graphics, or other matters; and
 - (e) prescribe requirements for preparing and presenting financial information; and
 - (f) prescribe requirements as to the layout or method of presentation of disclosure information (including the length of a document that contains the information and of the parts of that document, the size of type used, and when information may be incorporated by reference); and
 - (g) prescribe the documents that must, or must not, accompany disclosure information.
- (3) In this section, **disclosure information** means the document or other information that must be published, provided, or otherwise made available under a disclosure standard.
- (4) In this section, **relevant legislation** means any of the following:
- (a) prudential legislation:
 - (b) financial markets legislation within the meaning of section 4 of the Financial Markets Authority Act 2011:
 - (c) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and any regulations made under that Act.

Compare: 2023 No 35 s 88

56J Contingency and recovery plans and facilitating resolution under Part 4*Contingency and recovery plans*

- (1) A standard may regulate, deal with, or otherwise relate to contingency and recovery plans, including 1 or more of the following matters:
- (a) the purposes for which an insurer, a New Zealand holding entity, or both must have those plans (for example, to ensure that an insurer or holding entity is reasonably prepared in the event of a resolution under Part 4):
 - (b) the contents of those plans, for example, the scenarios the plans must cover and the strategies and methods that must be included in the plans for dealing with those scenarios:
 - (c) the persons responsible for maintaining, activating, or implementing those plans:
 - (d) the notifying of the Bank of the activation of those plans:
 - (e) the arrangements for activating and implementing those plans (for example, obtaining necessary human, technological, financial, and other resources):
 - (f) the reviewing, updating, or testing of those plans:
 - (g) the changing of those plans (including when the Bank requires a change to be made).

Facilitating resolution (including pre-positioning requirements)

- (2) A standard may regulate, deal with, or otherwise relate to any matters to ensure that, in the event of a resolution under Part 4, the resolution can be carried out in an orderly manner and otherwise in accordance with the purposes set out in **section 137ZM**, including requirements in connection with the following:
- (a) the insurer, a New Zealand holding entity, or both having appropriate capacity and capability to help ensure that any financial distress or other difficulties that may occur are dealt with in an orderly manner (for example, having appropriate policies, processes, controls, or other arrangements in place):
 - (b) an implementation plan in connection with the matters referred to in **paragraph (a)**:
 - (c) a regular process to test the matters referred to in **paragraph (a)**.

Compare: 2023 No 35 s 89

56K Actuarial advice

A standard may regulate, deal with, or otherwise relate to actuarial advice, including 1 or more of the following matters:

- (a) policies and processes for obtaining actuarial advice:
- (b) requirements to obtain actuarial services:

- (c) requirements to establish and maintain an actuarial advice framework to provide for 1 or more of the following:
 - (i) when an insurer, a New Zealand holding entity, or both must obtain actuarial advice:
 - (ii) when the actuary must be an appointed actuary or another actuary:
 - (iii) managing conflicts of interest:
 - (iv) processes that manage the relationship between risk and capital (including requirements relating to documentation, risk assessment methods, recovery planning, reporting, and governance):
- (d) requirements to provide actuarial reports or other actuarial advice to 1 or more of the following:
 - (i) the governing body of the insurer, a New Zealand holding entity, or both:
 - (ii) the management of the insurer, a New Zealand holding entity, or both:
 - (iii) the Bank:
- (e) matters relating to the manner in which a review of actuarial information under section 77 is to be carried out (including specifying information as being actuarial information for the purposes of that section).

56L Other matters

A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:

Outsourcing

- (a) arrangements for any business, or functions relating to any business, of an insurer to be carried on by any person other than the insurer:

Related party exposures

- (b) exposures to related parties of an insurer, including any of the following matters:
 - (i) requiring transactions between an insurer and any related party to be entered into only on a particular basis (for example, on arm's-length terms):
 - (ii) monitoring transactions between an insurer and any related party:
 - (iii) managing risks arising from exposures to any related party:
 - (iv) writing off exposures to any related party:
 - (v) any other limits or restrictions on exposures to related parties:

Matters prescribed in regulations

- (c) any other matters that may be prescribed in the regulations.

Compare: 2023 No 35 s 90

*New Zealand holding entities***56M New Zealand holding entity of licensed insurer may be subject to standards and other requirements**

- (1) The following apply to a New Zealand holding entity of a licensed insurer:
 - (a) a provision of this Act that a standard referred to in **subsection (2)** identifies as applying to the holding entity;
 - (b) a standard under any of **sections 56E, 56F, and 56H to 56K** that applies to the holding entity under **section 56A(1)(b)**;
 - (c) a standard referred to in **subsection (4)**.
- (2) A standard may provide for any of the following to apply to all New Zealand holding entities, a particular New Zealand holding entity, or a class of those persons (in whole or in part):
 - (a) **section 24** (which relates to reporting a likely failure to comply with a prudential or solvency margin);
 - (b) section 120 (which requires the Bank to undertake prudential supervision);
 - (c) **subpart 1** of Part 3 (which relates to the supply of information);
 - (d) **subpart 6** of Part 3 (which relates to investigations);
 - (e) **subpart 7** of Part 3 (which relates to confidentiality);
 - (f) **Part 3A** (which relates to enforcement);
 - (g) Part 4 and **Schedule 2** (which relate to distress management).
- (3) If a provision of this Act applies to a New Zealand holding entity under a standard, the provisions applies with—
 - (a) all necessary modifications as if it were a licensed insurer; and
 - (b) all other modifications specified in the regulations (if any).
- (4) For the purposes of **subsection (1)(c)**, a standard may regulate, deal with, or otherwise relate to financial reporting requirements for a New Zealand holding entity or its group (or both), including requirements to prepare, have audited, and supply to the Bank financial statements, group financial statements, and interim financial information.
- (5) A New Zealand holding entity to which a standard applies must comply with the standard (*see* **subpart 2 of Part 3A**, which provides for a court to impose a pecuniary penalty for a contravention of an applicable standard).

*Bank's approval may be required***56N Standards may require Bank's approval**

- (1) A standard may impose a requirement for the Bank's approval in connection with a matter referred to in any of **sections 56E to 56M**.

- (2) If a standard provides for the Bank's approval,—
- (a) the standard must set out an appropriate manner in which the Bank must decide whether to give its approval and any conditions of the approval (for example, by specifying the matters that the Bank must have regard to, or be satisfied of, when deciding those matters); and
 - (b) a request for approval must be made in the manner specified by the Bank.
- (3) A contravention of a condition of the Bank's approval must be treated as being a contravention of the standard that imposed the requirement for the Bank's approval.

Guidance note

See **subpart 2 of Part 3A**, which allows the High Court to impose a pecuniary penalty for a contravention of a standard (which includes a contravention of a condition of the Bank's approval).

Compare: 2023 No 35 s 91

Conditions

560 Standards may provide for matters to be specified by conditions

- (1) The purpose of this section is to provide the flexibility to allow the requirements or other matters in standards to be set in a manner that takes into account the circumstances of particular insurers or New Zealand holding entities.
- (2) A standard may provide for a requirement or other matter to be specified by a condition of a licence if the Bank, after having regard to the considerations under **subsection (3)**, is satisfied as referred to in **subsection (4)**.
- (3) The Bank must have regard to—
 - (a) the purpose of this section; and
 - (b) whether the requirement or other matter would be more appropriately dealt with in standards only (rather than being specified by a condition of a licence).
- (4) The Bank must be satisfied that the standard—
 - (a) sets an appropriate range or limit within which the requirement or matter may be specified by the condition; or
 - (b) sets out an appropriate manner for the Bank to decide on the terms of the condition (for example, by specifying the matters that the Bank must have regard to, or be satisfied of, when deciding what condition is to apply).
- (5) This section does not limit **section 21(2)(ca) and (cb)**, which allows the Bank to impose particular requirements relating to prudential or solvency margins.

Compare: 2023 No 35 s 92

- 28 Section 60 amended (Licensed insurer must have current financial strength rating)**
In section 60(4), replace “\$1,000,000” with “\$1,500,000”.
- 29 Section 64 amended (Disclosure of current rating to policyholder)**
Repeal section 64(5).
- 30 Section 65 amended (Disclosure by insurers not required to be rated)**
Repeal section 65(5).
- 31 Section 71 replaced (Offence to fail to comply with disclosure obligations)**
Replace section 71 with:
- 71 Failure to comply with disclosure obligations**
A licensed insurer that contravenes any of sections 63 to 65 and 67 to 70 commits an infringement offence and is liable to—
- (a) an infringement fee of \$20,000; or
 - (b) a fine imposed by a court not exceeding \$50,000.
- 32 Section 72 amended (Overseas insurer must disclose overseas policyholder preference)**
Replace section 72(2) with:
- (2) An overseas insurer that contravenes this section commits an infringement offence and is liable to—
- (a) an infringement fee of \$20,000; or
 - (b) a fine imposed by a court not exceeding \$50,000.
- 33 Sections 73 to 75 and cross-heading above section 73 repealed**
Repeal sections 73 to 75 and the cross-heading above section 73.
- 34 Section 76 amended (Requirement for licensed insurers to have appointed actuary)**
In section 76(3), replace “192” with “**clause 44 of Schedule 2**”.
- 35 Section 77 amended (Review of actuarial information in, or used in the preparation of, financial statements)**
In section 77(5), after “offence if it”, insert “, without reasonable excuse,”.
- 36 Section 78 amended (Appointed actuary’s report)**
Replace section 78(g) and (h) with:
- (g) whether, in the actuary’s opinion and from an actuarial perspective, the licensed insurer is maintaining (as at the balance date of the insurer)—

- (i) the prudential margin that applies under a condition or an applicable standard; and
- (ii) the solvency margin that applies under a condition or an applicable standard; and
- (h) in the case of a life insurer, whether, in the actuary’s opinion and from an actuarial perspective, the life insurer is maintaining (as at the balance date of the insurer)—
 - (i) the prudential margins that apply in respect of its statutory funds under a condition or an applicable standard; and
 - (ii) the solvency margins that apply in respect of its statutory funds under a condition or an applicable standard; and
- (i) whether, in the actuary’s opinion and from an actuarial perspective, the licensed insurer is complying with any directions imposed under section 143 to take specified action in relation to its solvency.

37 Section 80 amended (Access to information)

In section 80(2), replace “\$1,000,000” with “\$1,500,000”.

38 Section 109 amended (Restructure of statutory funds)

In section 109(4)(b)(i) and (ii), before “a solvency margin”, insert “a prudential margin or”.

39 Section 118 amended (Offence to fail to comply with subpart)

- (1) In section 118(1), replace “\$500,000” with “\$1,500,000”.
- (2) In section 118(2), replace “Section 216” with “**Section 137ZC**”.

40 Sections 121 to 129 replaced

Replace sections 121 to 129 and the cross-heading above section 121 with:

Subpart 1—Supply of information

121 Bank may require person to supply information for purposes of Act

- (1) If the Bank considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act, the Bank may, by notice to any person, require the person to do 1 or more of the following:
 - (a) give to the Bank any information, or class of information, that is specified in the notice:
 - (b) produce for inspection any documents, or class of documents, that are specified in the notice:
 - (c) if necessary, reproduce, or assist in reproducing, in usable form, information recorded or stored in those documents.
- (2) The information required under **subsection (1)(a)** must be given—

- (a) for the periods, and in the form (including consolidated form), that may be specified in the notice; and
 - (b) in respect of the business, operation, or management of a person who is or may be any of the following:
 - (i) an insurer or any other financial service provider:
 - (ii) an associated person of an insurer; and
 - (c) in respect of business carried on in New Zealand or elsewhere and whether as principal, broker, agent, or intermediary; and
 - (d) within the period, and otherwise in the manner, that is specified in the notice.
- (3) The person must comply with **subsection (1)(b) and (c)** within the period, and otherwise in the manner, that is specified in the notice.
- (4) The Bank may take copies of any documents produced for inspection under **subsection (1)**.
- (5) For the purposes of this Act, a reference to matters relating to the **business, operation, or management** of a person includes the corporate, financial, or prudential matters of the person.

Compare: 2023 No 35 s 99

122 Offence to fail to supply information

- (1) A person commits an offence if they refuse or fail, without reasonable excuse, to comply with a notice under **section 121**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to,—
- (a) in the case of an individual, a fine not exceeding \$50,000;
 - (b) in any other case, a fine not exceeding \$500,000.

Compare: 2023 No 35 s 100

123 Bank may require report relating to licensed insurer or associated person

- (1) The Bank may, by notice to a licensed insurer, require the insurer to give the Bank a report or series of reports 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) The report or series of reports must be prepared by a person approved by the Bank.
- (3) The notice must contain a statement of the reasons why the Bank wants the report or series of reports to be given.

- (4) The licensed insurer must comply with the notice within the period, and otherwise in the manner, that is specified in the notice.

Compare: 2023 No 35 s 101

124 Associated person must supply information

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 **section 123**.

Compare: 2023 No 35 s 102

125 Bank may require report to be published

- (1) The Bank may, by notice to a licensed insurer, require the insurer to publish a report or series of reports under **section 123** (whether in whole or in part).
- (2) The notice must contain a statement of the reasons why the Bank wants the report or series of reports to be published.
- (3) The licensed insurer must comply with the notice within the period, and otherwise in the manner, that is specified in the notice.

Compare: 2023 No 35 s 103

126 Offence to fail to give or publish report

A licensed insurer or an associated person that, without reasonable excuse, contravenes a requirement under any of **sections 123 to 125** commits an offence and is liable on conviction to,—

- (a) in the case of an individual, a fine not exceeding \$50,000;
- (b) in any other case, a fine not exceeding \$500,000.

Compare: 2023 No 35 s 104

127 Requirement that information be audited or reviewed

- (1) The Bank may, by notice, require a licensed insurer or other person to obtain an audit or a review of any information that the insurer or other person is required to give to the Bank under—
- (a) this subpart; or
- (b) an applicable standard or a condition; or
- (c) any other prudential obligation.
- (2) The audit or review must be carried out by an auditor, an actuary, or any other person, approved by the Bank.
- (3) The licensed insurer or other person must comply with the notice within the period, and otherwise in the manner, that is specified in the notice.

Compare: 2023 No 35 s 105

128 Offence to fail to obtain audit or review

A licensed insurer or other person that, without reasonable excuse, contravenes a requirement under **section 127** commits an offence and is liable on conviction to,—

- (a) in the case of an individual, a fine not exceeding \$50,000;
- (b) in any other case, a fine not exceeding \$500,000.

Compare: 2023 No 35 s 106

129 Disclosure of information to Bank by auditors and actuaries

(1) This section and **sections 129A to 129C** apply to a person (**person A**) who holds, or at any time has held, office as required by any legislation,—

- (a) as an auditor of a licensed insurer or of an associated person of a licensed insurer; or
- (b) as an appointed actuary.

(2) Person A must disclose to the Bank information relating to the affairs of the licensed insurer or associated person obtained in the course of holding office as auditor or actuary if, in the opinion of person A,—

- (a) the licensed insurer or associated person—
 - (i) has contravened a prudential obligation; or
 - (ii) has contravened section 455 of the FMCA or any other legislation that requires proper accounting records to be kept; or
 - (iii) has contravened subpart 3 of Part 7 of the FMCA or any other legislation that relates to the preparation, audit, lodgement, or filing of financial statements; or
 - (iv) is likely to fail to maintain a prudential margin or a solvency margin at any time within the next 3 years; or
 - (v) is in serious financial difficulties; or
 - (vi) is, or has been, operating fraudulently or recklessly; and
- (b) the disclosure of the information is likely to assist, or be relevant to, the performance or exercise by the Bank of its functions, powers, or duties under this Act.

Compare: 2023 No 35 s 107

129A Auditor or actuary to inform of intention to disclose

Person A must, before disclosing any information to the Bank under **section 129**, take reasonable steps to inform the licensed insurer or associated person of the intention to disclose the information and the nature of the information.

Compare: 2023 No 35 s 108

129B Protection of auditor or actuary

- (1) No civil, criminal, or disciplinary proceedings lie against an auditor or actuary arising from the disclosure in good faith of information to the Bank under **section 129**.
- (2) No tribunal, body, or authority having jurisdiction in respect of the professional conduct of an auditor or actuary may make any order against, or do any act in relation to, the auditor or actuary in respect of the disclosure referred to in **subsection (1)**.

Compare: 2023 No 35 s 109

129C Admissibility of information

- (1) No information received by the Bank under **section 129** is admissible in evidence in any proceedings against the auditor or actuary concerned.
- (2) This section does not limit the admissibility of any information obtained in any other way.

Compare: 2023 No 35 s 110

Subpart 2—On-site inspections**129D Purpose**

The purpose of this subpart is to facilitate the Bank's ability to undertake prudential supervision of licensed insurers by doing 1 or more of the following:

- (a) assessing the adequacy of a licensed insurer's policies, processes, controls, or other arrangements for complying with its prudential obligations:
- (b) verifying a licensed insurer's compliance with its prudential obligations:
- (c) verifying the reliability of information supplied to the Bank by a licensed insurer under this Act:
- (d) examining any matter relating to the business, operation, or management of a licensed insurer in order to understand and identify risks in connection with those matters:
- (e) monitoring a licensed insurer's compliance with a remedial notice or plan under **subpart 4**:
- (f) examining the financial position or performance or cash flows of a licensed insurer:
- (g) carrying out a review of all, or 1 or more classes of, licensed insurers, in connection with 1 or more matters of prudential supervision (for example, a review of governance throughout the insurance sector):
- (h) doing any other thing that is incidental and related to, or consequential on, any thing that the Bank does under **paragraphs (a) to (g)**.

Compare: 2023 No 35 s 111

129E Bank may conduct on-site inspection

- (1) The Bank may enter and remain at any relevant place to carry out an on-site inspection of a licensed insurer if the Bank considers it necessary or desirable for the purposes of doing 1 or more of the things referred to in **section 129D**.
- (2) The Bank—
 - (a) may exercise the power only at a reasonable time and in a reasonable manner; but
 - (b) is not required to give notice of the exercise of the power.
- (3) In this subpart, **relevant place**, in relation to a licensed insurer, means any place of business of the insurer.

Compare: 2023 No 35 s 112

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

During an on-site inspection, the Bank may require any employee, director, or agent of the licensed insurer to—

- (a) answer questions relating to its records and documents; and
- (b) give all other information that the Bank may reasonably require for the purpose of the inspection.

Compare: 2023 No 35 s 113

129G Offence relating to on-site inspection

- (1) An employee, a director, or an agent of the licensed insurer commits an offence if they, without reasonable excuse,—
 - (a) refuse or fail to comply with a requirement under **section 129F** to answer any questions or give information; or
 - (b) resist, obstruct, or delay the Bank in carrying out an on-site inspection under this subpart.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to,—
 - (a) in the case of an individual, a fine not exceeding \$50,000;
 - (b) in any other case, a fine not exceeding \$500,000.

Compare: 2023 No 35 s 114

Subpart 3—Reporting duty**129H Licensed insurer must monitor compliance**

Every licensed insurer must ensure that there are in place effective methods for monitoring the licensed insurer's compliance with the prudential obligations.

Compare: 2023 No 35 s 115

129I Licensed insurer must report contraventions

- (1) This section applies if a licensed insurer believes that it has contravened, may have contravened, or is likely to contravene a prudential obligation in a material respect.
- (2) The licensed insurer must, as soon as practicable after it forms the belief, give the Bank a report containing—
 - (a) details of the belief; and
 - (b) the licensed insurer's grounds for the belief; and
 - (c) all other information prescribed by the regulations (if any).

Compare: 2023 No 35 s 116

129J Offence to fail to monitor compliance and report contraventions

A licensed insurer that, without reasonable excuse, contravenes **section 129H or 129I** commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$30,000; and
- (b) in any other case, to a fine not exceeding \$250,000.

Compare: 2023 No 35 s 117

129K Restriction on use of report

A report given by a licensed insurer under **section 129I** is not admissible as evidence in a civil or criminal proceeding against the insurer, except in a criminal proceeding that concerns the falsity of the report.

Compare: 2023 No 35 s 118

Subpart 4—Remedial notices and plans**129L Bank may require licensed insurer to take action in relation to contravention**

- (1) This section applies if—
 - (a) a licensed insurer has given the Bank a report under **subpart 3**; or
 - (b) the Bank otherwise has reasonable grounds to believe that a licensed insurer has contravened, may have contravened, or is likely to contravene a prudential obligation.
- (2) The Bank may, by notice (a **remedial notice**), require the insurer—
 - (a) to take specified actions within a specified period—
 - (i) to address the cause, or to remedy or mitigate the consequences, of the contravention; or
 - (ii) to ensure that the contravention does not occur or recur; or
 - (b) to give to the Bank a plan (a **remedial plan**).
- (3) The remedial plan must set out the following:

- (a) actions that the insurer will take—
 - (i) to address the cause, or to remedy or mitigate the consequences, of the contravention; or
 - (ii) to ensure that the contravention does not occur or recur:
 - (b) an appropriate timetable for taking the proposed actions to ensure that they are taken as soon as practicable:
 - (c) steps that the insurer will take to keep the plan current:
 - (d) any other matters required by the remedial notice.
- (4) The insurer must comply with a remedial notice in the manner specified in the notice.

Compare: 2023 No 35 s 119

129M Bank's consideration of remedial plan

- (1) If a licensed insurer gives a remedial plan to the Bank, the Bank may—
- (a) approve the remedial plan; or
 - (b) require the insurer to amend the remedial plan and resubmit it to the Bank by a specified date for approval or rejection; or
 - (c) reject the remedial plan.
- (2) Nothing in this section limits the Bank's power to issue a further remedial notice under **section 129L(2)(a)**.

Compare: 2023 No 35 s 120

129N Bank may require amendment of remedial plan

- (1) The Bank may at any time require the licensed insurer to amend a remedial plan that has been approved by the Bank.
- (2) If the Bank acts under **subsection (1)** or **section 129M(1)(b)**, the licensed insurer must, within the period and otherwise in the manner specified by the Bank, give to the Bank an amended remedial plan that addresses the matter required to be amended.

Compare: 2023 No 35 s 121

129O Remedial plan may also be amended with Bank's approval

- (1) A licensed insurer may also, at any time, amend a remedial plan that has been approved by the Bank, but only with the Bank's approval.
- (2) This section does not limit **section 129N**.

Compare: 2023 No 35 s 122

129P Licensed insurer must comply with remedial plan

If the Bank approves a remedial plan (whether as first provided or after amendment), the licensed insurer must take all reasonable steps to comply with the remedial plan.

Compare: 2023 No 35 s 123

129Q Other provisions relating to remedial notices and plans

- (1) Neither a remedial notice nor a remedial plan may require the licensed insurer to pay compensation.
- (2) A remedial notice must set out the reasons for which it is given.

Compare: 2023 No 35 s 124

129R Offence to contravene remedial notice, fail to give amended remedial plan, or fail to take steps to comply with remedial plan

A licensed insurer that intentionally or recklessly contravenes **section 129L, 129N, or 129P** commits an offence and is liable on conviction to a fine not exceeding \$1,500,000.

Compare: 2023 No 35 s 125

Subpart 5—Power to require warning to be disclosed**129S Bank may require its warning to be disclosed**

- (1) This section applies if—
 - (a) the Bank has reasonable cause to suspect that 1 or more of the following apply:
 - (i) a licensed insurer or other person has contravened, is contravening, or is likely to contravene a prudential obligation:
 - (ii) a licensed insurer has been or is operating fraudulently or recklessly; and
 - (b) the Bank has issued a warning to the licensed insurer or other person (A) about the matter referred to in **paragraph (a)**.
- (2) The Bank may, by notice given to A, order A, or all or any associated persons of A, or both to do 1 or more of the following:
 - (a) prominently disclose a copy of the warning on 1 or more Internet sites maintained by or on behalf of A or any of those associated persons:
 - (b) ensure that every communication of the kind that is specified in the order and that is distributed by or on behalf of A or any of those associated persons contains a copy of the warning in a prominent position or is accompanied by a copy of the warning:
 - (c) ensure that any document of the kind that is specified in the order and that is required by any relevant legislation to be given by A, or any of

those associated persons, to another person contains, or is amended to contain, a copy of the warning in a prominent position or is accompanied by a copy of the warning.

- (3) In this section, **relevant legislation** means any of the following:
- (a) prudential legislation:
 - (b) financial markets legislation within the meaning of section 4 of the Financial Markets Authority Act 2011:
 - (c) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and any regulations made under that Act.

Compare: 2023 No 35 s 133

129T Procedural matters relating to order

The Bank may make an order under this subpart only if—

- (a) the Bank gives A at least 3 working days' notice of the following matters before the Bank exercises the power:
 - (i) that the Bank may make an order; and
 - (ii) the reasons why it is considering exercising that power; and
- (b) the Bank gives A or A's representative an opportunity to make written submissions and to be heard on the matter within that notice period.

Compare: 2023 No 35 s 134

129U Other provisions relating to order

- (1) The Bank may make an order under this subpart on the terms and conditions (if any) that it thinks fit.
- (2) If the order extends to associated persons of A, the order may require—
 - (a) all, or any specified class or classes, of the associated persons to comply with the order (including associated persons that may be incorporated or formed after the date of the order); and
 - (b) A to provide a copy of the order to all or any of those associated persons.
- (3) For the purpose of **subsection (2)**, the order is not required to refer to the associated persons by name.

Compare: 2023 No 35 s 135

129V Bank must give notice of orders

If the Bank makes an order under this subpart,—

- (a) it must, immediately after exercising the power, give notice on the Bank's Internet site of—
 - (i) the reasons for making the order; and
 - (ii) the terms and conditions of the order (if any); and

- (iii) any other information the Bank thinks relevant in the circumstances; and
- (b) it may give public notice by any other means of the matters in **paragraph (a)**; and
- (c) it may notify any other person of the matters in **paragraph (a)**.

Compare: 2023 No 35 s 136

129W Offence to fail to comply with order

- (1) A person to whom an order under this subpart applies commits an offence if the person refuses or fails, without reasonable excuse, to comply with the order.
- (2) A person who commits an offence against this section is liable on conviction to,—
 - (a) in the case of an individual, a fine not exceeding \$50,000;
 - (b) in any other case, a fine not exceeding \$500,000.

Compare: 2023 No 35 s 137

41 Sections 130 and 131 replaced

Replace sections 130 and 131 and the cross-heading above section 130 with:

Subpart 6—Investigations

130 Bank may appoint investigator

- (1) This section applies if the Bank has reasonable cause to suspect that 1 or more of the following apply:
 - (a) an insurer or other person has failed to comply with section 15 or 16 (requirements to be licensed and not to hold out);
 - (b) a licensed insurer or other person has contravened, is contravening, or is likely to contravene a prudential obligation;
 - (c) a licensed insurer has been or is operating fraudulently or recklessly.
- (2) If the Bank considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act, the Bank may appoint, in writing, a person (an **investigator**) to carry out an investigation of the affairs of a person referred to in **subsection (1)**.
- (3) The investigator must be an employee of the Bank or any other person who the Bank is satisfied is suitably qualified.
- (4) This section and **sections 131 to 134** do not limit the Bank's powers under **subpart 1** of this Part.

Compare: 2023 No 35 s 126

131 Power to obtain information

- (1) An investigator may, for the purposes of carrying out an investigation of the affairs of a person (A) referred to in **section 130(1)**, do 1 or more of the following:
 - (a) by notice, require A, or any director or employee of A, or any other person, to—
 - (i) give any information, or class of information, relating to the business, operation, or management of A; or
 - (ii) produce for inspection any documents, or class of documents, of or relating to the business, operation, or management of A that are in the custody or under the control of A or the director, employee, or other person; or
 - (iii) if necessary, reproduce, or assist in reproducing, 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 director or employee of A, or any other person, to answer any question relating to the business, operation, or management of A.
- (2) Any questioning under **subsection (1)(c)** may be carried out by the investigator, or a lawyer acting on behalf of the investigator, 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 under this section must, if requested, produce the instrument of the investigator's appointment.

Compare: 2023 No 35 s 127

42 Section 133 amended (Offences in relation to investigations)

Replace section 133 with:

133 Offences in relation to investigations

- (1) A person commits an offence if they, without reasonable excuse,—
 - (a) hinder, obstruct, or delay an investigator in carrying out an investigation under this subpart; or
 - (b) contravene a requirement of a notice given under **section 131**; or
 - (c) refuse to answer any question put to them under **section 131** or to take an oath or make an affirmation when required to do so under that section.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 9 months or to a fine not exceeding \$200,000 (or both):

(b) in any other case, to a fine not exceeding \$1,500,000.

Compare: 2023 No 35 s 129

43 Section 134 replaced (Effect of final decision that exercise of powers under sections 130 and 131 unlawful)

Replace section 134 with:

134 Effect of final decision that exercise of powers under sections 121 and 131 unlawful

- (1) In any case where it is declared in a final decision given in a proceeding in respect of the exercise or purported exercise of powers conferred by **section 121 or 131** (a **relevant section**) that the exercise of any powers conferred by that section is unlawful, to the extent to which the exercise of those powers is declared unlawful,—
- (a) the Bank or an investigator must ensure that, as soon as is reasonably practicable after the decision of the court is given,—
- (i) any information supplied by a person under the relevant section is destroyed:
 - (ii) any documents or extracts from documents obtained as a consequence of an inspection made under the relevant section are returned to the person who previously had possession of those documents or previously had them under their control, and any copies of those documents or extracts are destroyed:
 - (iii) any information derived from or based upon any such information or documents or extracts is destroyed:
- (b) no information supplied by a person under, or purportedly under, a relevant section, and no documents or extracts from documents obtained under, or purportedly under, a relevant section,—
- (i) are admissible in evidence in any civil proceeding unless the court hearing the proceeding in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence:
 - (ii) are admissible as evidence in any criminal proceeding if the evidence is excluded under section 30 of the Evidence Act 2006:
 - (iii) may be used in connection with the exercise of any power conferred on the Bank or an investigator unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence.
- (2) However, the court may, in the court's discretion, order that any information, record, or copy of any document or extract from a document may, instead of being destroyed, be retained by the Bank or an investigator subject to any terms and conditions that the court imposes.

44 Cross-heading above section 135 replaced

Replace the cross-heading above section 135 with:

Subpart 7—Miscellaneous provisions**45 Section 135 amended (Confidentiality of information, data, documents, and forecasts)**

Replace section 135(5) with:

- (5) An officer or employee of the Bank or an investigator commits an offence if the officer, employee, or investigator intentionally or recklessly fails to comply with this section and is liable, on conviction, to imprisonment for a term not exceeding 9 months or to a fine not exceeding \$200,000 (or both).

46 Section 136 amended (Limits on further disclosure of information, data, documents, or forecasts)

Replace 136(2) with:

- (2) A person commits an offence if the person intentionally or recklessly fails to comply with this section and is liable, on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 9 months or to a fine not exceeding \$200,000 (or both):
- (b) in any other case, to a fine not exceeding \$1,500,000.

47 New Part 3A inserted

After section 137, insert:

**Part 3A
Enforcement****Subpart 1—Power to accept undertakings****137A Bank may accept voluntary undertaking**

The Bank may accept a written undertaking from a licensed insurer or other person about a matter in relation to which the Bank is performing or exercising any of its functions, powers, or duties under this Act.

Compare: 2023 No 35 s 148

137B When undertaking is enforceable

An undertaking takes effect and becomes enforceable when the Bank's decision to accept the undertaking is given to the person who made the undertaking, or at any later time specified by the Bank.

Compare: 2023 No 35 s 149

137C What undertaking may include

An undertaking may include (without limitation) an undertaking from the insurer or person to—

- (a) pay compensation to any person; or
- (b) take specified action to address the cause, or to remedy or mitigate the consequences, of a contravention (or likely contravention) of a prudential obligation, or to ensure that the contravention does not occur or recur; or
- (c) pay an amount to the Bank in lieu of a pecuniary penalty.

Compare: 2023 No 35 s 150

137D Undertakings that include payment of money

If the undertaking includes the payment of an amount in lieu of a pecuniary penalty,—

- (a) the amount must be paid into a Crown Bank Account (after deducting the Bank's costs incurred in connection with the matter); and
- (b) the Bank must give notice of the payment on the Bank's Internet site, including—
 - (i) a statement of the amount to be paid; and
 - (ii) a brief description of the alleged contravention to which the undertaking relates.

Compare: 2023 No 35 s 151

137E Offence to contravene undertaking

- (1) A person must not contravene an undertaking given by that person that is in force.
- (2) A person that contravenes **subsection (1)** commits an offence and is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$30,000;
 - (b) in any other case, to a fine not exceeding \$250,000.

Compare: 2023 No 35 s 152

137F Court may enforce undertaking

- (1) The Bank may apply to the High Court for an order under this section if the Bank is satisfied that a person has contravened an undertaking given by that person that is in force.
- (2) The court may make an order directing the person to do 1 or more of the following:
 - (a) comply with the undertaking:

- (b) pay to the Crown an amount representing (wholly or partly) any financial benefit that the person has received because of the contravention of the undertaking:
 - (c) pay compensation to any person.
- (3) The order may include consequential directions.
- Compare: 2023 No 35 s 153

137G Court must take into account certain matters

The High Court must, before making the order, take into account the following:

- (a) the nature and extent of the contravention of the undertaking:
- (b) the nature and extent of any loss or damage incurred by any person as a result of the contravention:
- (c) the circumstances in which the contravention occurred (including whether it was intentional, inadvertent, or caused by negligence):
- (d) any other matters the court considers relevant.

Compare: 2023 No 35 s 154

137H Proceedings for alleged contravention

- (1) No proceedings may be brought for a contravention or an alleged contravention of this Act or the regulations against—
- (a) a person who made an undertaking in relation to that contravention or alleged contravention, while the undertaking is enforceable and there is no contravention of the undertaking:
 - (b) a person who made, and has completely discharged, an undertaking in relation to that contravention or alleged contravention.
- (2) The Bank may accept an undertaking in relation to a contravention or an alleged contravention before proceedings in relation to that contravention or alleged contravention have been completed.
- (3) If the Bank accepts an undertaking before the proceedings are completed, the Bank must take all reasonable steps to have the proceedings discontinued as soon as practicable (to the extent that the proceedings relate to that contravention or alleged contravention).

Compare: 2023 No 35 s 155

137I Licensed insurer or other person may withdraw or amend undertaking

A licensed insurer or other person may withdraw or amend an undertaking only with the Bank's consent.

Compare: 2023 No 35 s 156

Subpart 2—Pecuniary penalty

137J When court may make pecuniary penalty orders

- (1) The High Court may, on the application of the Bank, order a person (A) to pay to the Crown the pecuniary penalty that the court determines to be appropriate if the court is satisfied that A has—
 - (a) contravened an applicable standard; or
 - (b) been involved in a contravention of an applicable standard; or
 - (c) contravened a condition of its licence.
- (2) In this subpart,—
 - (a) **A's conduct** means the conduct of A for which A is liable to the pecuniary penalty:
 - (b) a person is **involved in a contravention** of an applicable standard if the person—
 - (i) has aided, abetted, counselled, or procured the contravention; or
 - (ii) has induced, whether by threats or promises or otherwise, the contravention; or
 - (iii) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (iv) has conspired with others to effect the contravention.

Compare: 2023 No 35 s 157

137K Maximum amount of pecuniary penalty

- (1) The maximum amount of a pecuniary penalty that a body corporate may be ordered to pay for a contravention, or involvement in a contravention, of an applicable standard or a condition of a licence is \$2,500,000.
- (2) The maximum amount of a pecuniary penalty that an individual may be ordered to pay for a contravention of, or involvement in a contravention of, an applicable standard, is \$300,000.

Compare: 2023 No 35 s 158

137L Considerations for court

In determining whether to make an order, and the amount of any pecuniary penalty to be paid, the High Court must have regard to the following matters:

- (a) the extent to which A's conduct undermines the purposes of this Act;
- (b) any loss or damage caused by A's conduct;
- (c) whether A has taken steps to avoid or mitigate any adverse effects arising from A's conduct;
- (d) whether A's conduct was intentional or reckless:

- (e) the circumstances of A's conduct:
- (f) whether A has previously engaged in similar conduct:
- (g) any other matters the court considers relevant.

Compare: 2023 No 35 s 159

137M Defences for person that contravenes prudential obligation

- (1) This section applies to a proceeding under this subpart against A for a contravention of an applicable standard or a condition of a licence.
- (2) It is a defence for A to prove that the contravention was due to reasonable reliance on information provided by another person, other than a director, an employee, or an agent of A.
- (3) It is also a defence for A to prove that—
 - (a) the contravention was due to—
 - (i) the conduct of another person, other than a director, an employee, or an agent of A; or
 - (ii) an accident or some other cause beyond the control of A and A's directors, employees, and agents; and
 - (b) A took reasonable precautions and exercised due diligence to avoid the contravention.
- (4) A's conduct must still be treated as contravening an applicable standard or a condition of a licence even if the conduct does not lead to any liability under this subpart because of the availability of a defence.

Compare: 2023 No 35 s 160

137N Defence for person that is involved in contravention

- (1) This section applies if—
 - (a) a person (**B**) has contravened an applicable standard; and
 - (b) another person (**C**) is involved in the contravention.
- (2) In a proceeding under this subpart against C for involvement in the contravention, it is a defence if C proves that—
 - (a) C's involvement in the contravention was due to reasonable reliance on information supplied by another person, other than a director, an employee, or an agent of C; or
 - (b) C took all reasonable steps to ensure that B complied with the applicable standard.

Compare: 2023 No 35 s 161

137O Court must order that recovery from pecuniary penalty be applied to Bank's actual costs

If the High Court orders a person to pay a pecuniary penalty, the court must also order that the penalty must be applied first to pay the Bank's actual costs in bringing the proceedings.

Compare: 2023 No 35 s 162

137P Rules of civil procedure and civil standard of proof apply

The proceedings under this subpart are civil proceedings and the rules of High Court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

Compare: 2023 No 35 s 163

137Q Limitation

- (1) A proceeding under this subpart may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.
- (2) However, no proceeding under this subpart may be commenced 10 years or more after the matter giving rise to the contravention.
- (3) Section 48(1) and (3) of the Limitation Act 2010 (which relates to fraud) applies with all necessary modifications to the 10-year period referred to in **subsection (2)** as if it were a longstop period.

Compare: 2023 No 35 s 164

137R Only 1 pecuniary penalty order may be made for same conduct

If conduct by a person constitutes a contravention, or involvement in the contravention, of 2 or more obligations, proceedings may be brought against that person for the contravention, or involvement in the contravention, of any 1 or more of the obligations, but no person is liable to more than 1 pecuniary penalty order for the same conduct.

Compare: 2023 No 35 s 165

137S No pecuniary penalty and criminal penalty for same conduct

A person cannot be ordered to pay a pecuniary penalty and be liable for a fine or to imprisonment under this Act or any other Act for the same conduct.

Compare: 2023 No 35 s 166

137T Relationship between concurrent pecuniary penalty proceeding and criminal proceeding

- (1) A criminal proceeding for an offence may be commenced against a person in relation to particular conduct whether or not a proceeding under this subpart has been commenced against the person in relation to the same conduct.

- (2) A proceeding under this subpart against a person in relation to particular conduct is stayed (unless the High Court orders otherwise) if a criminal proceeding against the person has been commenced for an offence in relation to the same conduct.
- (3) After the criminal proceeding referred to in **subsection (2)** has been completed or withdrawn, a person may apply to have the stay lifted on the pecuniary penalty proceeding.
Compare: 2023 No 35 s 167

Subpart 3—Infringement offences

137U Infringement offences

- (1) A person who is alleged to have committed an infringement offence may—
 - (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) be issued with an infringement notice under **section 137V**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.
Compare: 2023 No 35 s 168

137V When infringement notice may be issued

The Bank may issue an infringement notice to a person if the Bank believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

Compare: 2023 No 35 s 169

137W Revocation of infringement notice before payment made

- (1) The Bank may revoke an infringement notice before—
 - (a) the infringement fee is paid; or
 - (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) The Bank must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice.
- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any further action as described in **section 137U(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter.
Compare: 2023 No 35 s 170

137X What infringement notice must contain

An infringement notice must be in the form prescribed in the regulations and must contain the following particulars:

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence;
- (b) the amount of the infringement fee;
- (c) the address of the Bank;
- (d) how the infringement fee may be paid;
- (e) the time within which the infringement fee must be paid;
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957;
- (g) a statement that the person served with the notice has a right to request a hearing;
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing;
- (i) any other matters prescribed in the regulations.

Compare: 2023 No 35 s 171

137Y How infringement notice may be served

- (1) An infringement notice may be served on the person who the Bank believes is committing or has committed the infringement offence by—
 - (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
 - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
 - (c) leaving it for the person at the person's place of business or work with another person; or
 - (d) if the person is a body corporate, delivering it to a director or an employee of the body corporate at its head office, principal place of business or work, or registered office, or by bringing it to the director's notice or the employee's notice if that person refuses to accept it; or
 - (e) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
 - (f) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand.
- (2) If the person is a body corporate,—
 - (a) **subsection (1)(a) to (c)** does not apply (but *see* **subsection (1)(d)** instead); and

- (b) the infringement notice (or a copy of it) sent in accordance with **subsection (1)(e) or (f)** must be sent for the attention of a director or employee of the body corporate.
- (3) Unless the contrary is shown,—
 - (a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and
 - (b) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the Bank.

Compare: 2023 No 35 s 172

137Z Payment of infringement fees

All infringement fees paid for infringement offences must be paid into a Crown Bank Account.

Compare: 2023 No 35 s 173

137ZA Reminder notices

A reminder notice must be in the form prescribed in the regulations and must include the same particulars, or substantially the same particulars, as the infringement notice.

Compare: 2023 No 35 s 174

Subpart 4—Offences

137ZB False declarations and representations

- (1) A person (A) commits an offence if, for any purpose relating to this Act,—
 - (a) A makes a declaration or representation to the Bank or an investigator and A knows that, or is reckless as to whether, the declaration or representation is false or misleading in any material particular; or
 - (b) A gives to the Bank or an investigator any information and A knows that, or is reckless as to whether, the information is false or misleading in any material particular; or
 - (c) A gives to the Bank or an investigator a document that is not genuine and A knows that, or is reckless as to whether, the document is not genuine; or
 - (d) A otherwise publishes or makes available any information and A knows that, or is reckless as to whether, the information is false or misleading in any material particular.
- (2) **Subsection (1)** applies whether A acts on A's own behalf or on behalf of any other person.

- (3) **Subsection (1)(a)** applies whether A makes the declaration or representation orally or in writing.
- (4) A person who commits an offence under this section is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$100,000;
 - (b) in any other case, to a fine not exceeding \$1,500,000.
- (5) This section does not apply in the case of section 17(4) or 201(4).

137ZC Liability of directors

If a body corporate is convicted of an offence under this Act, every director of the body corporate is guilty of the offence if it is proved—

- (a) that the act that constituted the offence took place with the director's authority, permission, or consent; or
- (b) that the director—
 - (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.

137ZD Defence for offences against this Act

- (1) This section applies to offences against any of sections 17, **24**, 31, **35**, **41**, **43A**, **53E**, 60, 77, 80(2), 81, 118, **122**, **126**, **128**, **129D**, **129G**, **129T**, 133, 148, 150, 200, 201, 218, and 219.
- (2) In any prosecution of a person for an offence referred to in **subsection (1)**, 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.
- (3) For the purposes of **subsection (2)(a)**, another person does not include a director, employee, or agent of the person charged with the offence.
- (4) 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 (2)(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.

137ZE Time for filing charging document

- (1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of a category 1 offence or a category 2 offence under this Act ends on the date that is 5 years after the date on which the offence was committed.

- (2) Nothing in **subsection (1)** affects the application of section 25 of the Criminal Procedure Act 2011 in relation to any offence not mentioned in that subsection.
- (3) In this section, **category 1 offence** and **category 2 offence** have the same meanings as in section 6(1) of the Criminal Procedure Act 2011.

Subpart 5—Ban ordered by District Court

137ZF Power to ban certain persons from participating in insurance business

- (1) The District Court may, on the application of the Bank, make an order in respect of a person under **subsection (2)** if the court considers that the person—
 - (a) has, in connection with an insurance business, engaged in an act, omission, or course of conduct that constitutes serious wrongdoing and that 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) has failed to comply with an order under **section 37**; or
 - (c) as a director of a licensed insurer, has persistently or seriously failed to comply with this Act or the regulations; or
 - (d) is a director of a licensed insurer that has persistently or seriously failed to comply with any prudential obligation, and the person has persistently failed to take reasonable steps to prevent or stop that failure; or
 - (e) 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 the District Court under this section must be made by an originating application.
- (4) A ban under this section has effect from the date specified in the order even though an appeal may have been lodged under **section 137ZH**.

- (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 court thinks fit; and
 - (d) cancelled or varied at any time by the 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.

137ZG Notice of hearing

- (1) If an application is made for an order under **section 137ZF**, 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 the hearing to—
 - (i) the Bank; and
 - (ii) the person to whom the application relates; 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 person to whom the application relates 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.

137ZH Appeals to High Court

- (1) Any person who has a right to appear and be heard in any proceedings under **section 137ZF** may appeal to the High Court if the 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 is by way of rehearing.

137ZI Appeal to Court of Appeal on question of law

- (1) A party to an appeal under **section 137ZH** may appeal to the Court of Appeal, with the leave of the High Court or, if the High Court refuses leave, with the leave of the Court of Appeal, against the determination of the High Court on a question of law arising in that appeal.
- (2) Section 56 of the Senior Courts Act 2016 applies to the appeal.
- (3) 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.
- (4) The Court of Appeal, in granting leave, may impose the conditions that it thinks fit, whether as to costs or otherwise.
- (5) The decision of the Court of Appeal on any application for leave to appeal, or on an appeal under this section, is final.

137ZJ Register of banned persons

- (1) The Bank must keep a register of persons banned under **section 137ZF** (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.

137ZK Search of register

- (1) A person may search the register in accordance with this Act or the regulations.
- (2) The register may be searched only by reference to the following criteria:
 - (a) in the case of an individual,—
 - (i) the name, or former name, of the person:
 - (ii) the residential or business address of the person:
 - (iii) the person's date of birth:
 - (iv) any combination of the criteria in **subparagraphs (i) to (iii)**:
 - (b) in the case of a body corporate,—
 - (i) the name, or former name, of the body corporate:
 - (ii) the address of the body corporate's registered office:
 - (iii) the address of any place of business of the body corporate:
 - (iv) any combination of the criteria in **subparagraphs (i) to (iii)**.

- (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 a person is banned under **section 137ZF** (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 69 of the Privacy Act 2020.

137ZL Offence for banned person to participate in insurance business in breach of order

A person commits an offence if the person intentionally or recklessly fails to comply with an order under **section 137ZF** and is liable, on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 9 months or to a fine not exceeding \$200,000 (or both);
- (b) in any other case, to a fine not exceeding \$1,500,000.

48 New section 137ZM inserted (Additional purposes of this Part)

After the Part 4 heading, insert:

137ZM Additional purposes of this Part

- (1) This Part has the following purposes (in addition to those set out in section 3):
- (a) to deal with a licensed 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) avoid or minimise, and otherwise manage, the risk that a failure, or possible failure, of the insurer may cause significant damage to the financial system or the economy of New Zealand; and
 - (b) to enable a licensed insurer that is in resolution to be dealt with in an orderly manner; and
 - (c) to the extent not inconsistent with any of **paragraphs (a) and (b)**, to support the effective and efficient management of public financial resources by avoiding or minimising, and otherwise managing, the need to rely on public money to deal with a licensed insurer that is in financial distress or other difficulties.
- (2) In this Part, **public money** has the same meaning as in section 2(1) of the Public Finance Act 1989.
- (3) This section does not limit section 3.

49 Subpart 1 of Part 4 repealed

Repeal subpart 1 of Part 4.

50 Section 143 replaced (Bank may give directions to licensed insurer)

Replace section 143 with:

143 Bank may give directions to licensed insurer

- (1) The Bank may give a licensed insurer (A) a direction if the Bank—
 - (a) has reasonable grounds to believe that 1 or more of the circumstances set out in **subsection (2)** apply; and
 - (b) considers that directing A is necessary or desirable for 1 or more of the following purposes:
 - (i) to remedy or avoid the matter set out in **subsection (2)**;
 - (ii) to avoid or mitigate any adverse effects arising, or likely to arise, in connection with the matter set out in **subsection (2)**;
 - (iii) to avoid any contravention or further contravention of a prudential obligation in connection with the matter set out in **subsection (2)**.
- (2) The circumstances are as follows:
 - (a) A has failed, is failing, or is likely to fail to maintain a prudential margin or a solvency margin;
 - (b) A, or a director or relevant officer of A, has contravened, may have contravened, or is likely to contravene any other prudential obligation in a material respect;
 - (c) A's governance structure 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 19(1)(i));
 - (d) A is an overseas insurer and an overseas supervisor has taken, or is taking, regulatory action against A (whether or not that action has been completed);
 - (e) A is an overseas insurer and the law, requirements, or supervision referred to in section 19(1)(j) 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).
- (3) **Subsection (2)(a)** does not limit **subsection (2)(b)**.
- (4) 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); or
- (d) civil or criminal proceedings against the insurer.

Compare: 2023 No 35 s 265

51 Section 144 amended (Scope of directions to licensed insurer)

- (1) Replace section 144(1)(b) with:

(b) cease entering into any contracts of insurance (whether by way of renewal or otherwise):

- (2) After section 144(1)(d), insert:

(da) comply with 1 or more of the following:

- (i) requirements for dividend policies;
- (ii) requirements that must be complied with before a dividend is paid;
- (iii) requirements to cease paying any dividend;
- (iv) a prohibition or restriction on the payment of any dividend:

- (3) Repeal section 144(2).

52 Section 145 replaced (Bank may give directions to associated person)

Replace section 145 with:

145 Bank may give directions to associated person

- (1) The Bank may give an associated person (**B**) of a licensed insurer (**A**) a direction if the Bank—
- (a) has reasonable grounds to believe that 1 or more of the circumstances set out in **subsection (2)** apply; and
 - (b) considers that directing B is necessary or desirable for 1 or more of the following purposes:
 - (i) to remedy or avoid the matter set out in **subsection (2)**;
 - (ii) to avoid or mitigate any adverse effects arising, or likely to arise, in connection with the matter set out in **subsection (2)**;

- (iii) to avoid any contravention or further contravention of a prudential obligation in connection with the matter set out in **subsection (2)**.
- (2) The circumstances are as follows:
 - (a) A's business and affairs are so closely connected with B that the Bank would be unable to effectively exercise the powers conferred by this Part in relation to A unless a direction is issued to B:
 - (b) the circumstances of B are such as to be prejudicial to—
 - (i) A's solvency; or
 - (ii) A's ability to comply with a prudential obligation in a material respect:
 - (c) B's affairs are being conducted in a manner prejudicial to—
 - (i) A's solvency; or
 - (ii) A's ability to comply with a prudential obligation in a material respect.

53 Section 148 amended (Offence to contravene directions)

- (1) In section 148(3)(a), replace “3 months” with “9 months”.
- (2) Replace section 148(3)(b) with:
 - (b) in any other case, to a fine not exceeding \$1,500,000.

54 Section 149 amended (Power to remove, replace, or appoint directors, auditor, or actuary)

In section 149(1)(a), replace “section 143(1) or 145” with “**section 143(2) or 145(2)**”.

55 Section 150 amended (Offence to disclose giving of direction or notice)

- (1) In section 150(4), replace “section 144(1)(f)” with “section 144(f)”.
- (2) In section 150(5)(a), replace “3 months” with “9 months”.
- (3) Replace section 150(5)(b) with:
 - (b) in any other case, to a fine not exceeding \$1,500,000.

56 Subpart 3 heading in Part 4 amended

In Part 4, in the subpart 3 heading, delete “of licensed insurers”.

57 Cross-heading above section 151 amended

In the cross-heading above section 151, replace “to put insurer into” with “for”.

58 Section 151 replaced (Bank may apply for liquidation of insurers)

Replace section 151 with:

151 Liquidation of licensed insurers and associated persons

- (1) This section applies to a person (A) if—
 - (a) A is a licensed insurer (whether or not it is in resolution); or
 - (b) A—
 - (i) is an associated person of a licensed insurer; and
 - (ii) is in resolution; and
 - (iii) is not itself a licensed insurer.
- (2) The Bank or a resolution manager may apply to the High Court under the Companies Act 1993 to put A into liquidation under that Act.
- (3) **Subsection (2)** applies whether A is a company, an association, or an overseas company.
- (4) A resolution manager may apply only with the prior approval of the Bank.
Compare: 2023 No 35 s 422

151A When court may appoint liquidator

- (1) The High Court may, on an application under **section 151**, appoint a liquidator for A if it is satisfied that—
 - (a) A 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 A is a company); or
 - (b) A is failing to maintain a solvency margin; or
 - (c) A has persistently or seriously contravened any prudential obligation; or
 - (d) A is carrying on insurance business in New Zealand without holding a licence in breach of section 15; or
 - (e) it is just and equitable that A be put into liquidation.
- (2) In the case of an application under **section 151**, **subsection (1)** applies instead of section 241(4) of the Companies Act 1993.
Compare: 2023 No 35 s 423

151B Liquidation of body corporate carrying on insurance business in New Zealand without holding licence

- (1) The High Court may, on the application of the Bank, appoint a liquidator for a body corporate that may be put into liquidation 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 15.
- (2) This section does not limit **sections 151 and 151A**.

151C Other provisions relating to liquidations

- (1) An application under **section 151 or 151B** must be treated as if it were an application under section 241(2)(c) of the Companies Act 1993 (and, in the case of an overseas company, also an application under section 342 of that Act).
- (2) **Sections 151 to 151B** do not limit or affect any other legislation that provides for the winding up, liquidation, or dissolution of a body corporate or a class of body corporate.

59 Section 152 amended (Bank may apply for High Court to reduce value of contracts of insurance)

In section 152(1), replace “151(2)(a) to (d)” with “**151A(1)(a) to (d)**”.

60 Section 156 amended (Bank’s participation in arrangements, amalgamations, and compromises under Companies Act 1993)

Replace section 156(2) with:

- (2) A licensed insurer that contravenes subsection (1) commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

61 Section 157 amended (Bank must be sent copy of applications under Parts 14 to 16 of Companies Act 1993)

Replace section 157(2) with:

- (2) A licensed insurer that contravenes subsection (1) commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

62 Subpart 4 of Part 4 replaced

Replace subpart 4 of Part 4 with:

Subpart 4—Resolution of licensed insurers and associated persons

170 Resolution of licensed insurers and associated persons

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 in resolution; and
- (b) declare that 1 or more associated persons of a licensed insurer are in resolution.

Compare: 2023 No 35 s 274

171 Resolution of subsidiaries

- (1) If a licensed insurer (A) enters resolution, every subsidiary of A also enters resolution unless the subsidiary is declared to be a subsidiary to which the order under **section 170** does not apply.
- (2) If A acquires a subsidiary after it enters resolution, the subsidiary is also in resolution unless an Order in Council is made before the acquisition that declares that the subsidiary to be acquired is not in resolution.
- (3) A person that holds office as the resolution manager in respect of A also holds office as the resolution manager in respect of the subsidiaries that are in resolution (unless a notice under **clause 56 of Schedule 2** provides otherwise).

Compare: 2023 No 35 s 275

172 Resolution for overseas persons

If a licensed insurer in resolution is an overseas person, this subpart, **subparts 5 to 8**, and **Schedule 2** apply only to—

- (a) the property, rights, and liabilities relating to its New Zealand business; and
- (b) the management or conduct of its New Zealand business.

Compare: 2023 No 35 s 276

173 Date on which, and time at which, resolution starts

- (1) An Order in Council made under **section 170** must specify the date on which, and the time at which, it comes into force.
- (2) The date and time must not be earlier than the date on which, and the time at which, the Order in Council is made.
- (3) A licensed insurer or an associated person—
 - (a) **enters resolution** when the Order in Council comes into force (or as referred to in **subsection (4)**); and
 - (b) remains **in resolution** until the end of the resolution under **section 176**.
- (4) However,—
 - (a) a subsidiary that is in resolution as referred to in **section 171(2)** enters resolution when it is acquired;
 - (b) a body corporate that is in resolution as referred to in **clause 22 or 27 of Schedule 2** enters resolution when it is formed and registered.
- (5) If a question arises as to whether, on the date on which a licensed insurer or an associated person entered resolution, an act was done or a transaction was entered into or effected before or after the insurer or person entered resolution, the act or transaction must, in the absence of proof to the contrary, be treated as

having been done or entered into or effected after the insurer or person enters resolution.

Compare: 2023 No 35 ss 277, 278

174 Grounds on which licensed insurer may be declared to be in resolution

- (1) The Bank may make a recommendation under **section 170** in respect of a licensed insurer only if it is satisfied on reasonable grounds that—
 - (a) 1 or more of the circumstances specified in **section 143(2)** apply and the failure of the insurer may cause any of the following:
 - (i) significant damage to the financial system or the economy of New Zealand (or both); or
 - (ii) significant harm to a significant number or group of policyholders; or
 - (b) the insurer is, or may be, operating fraudulently or recklessly, and that it is desirable that the insurer be declared to be in resolution 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 170** 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 any policyholders of the insurer cannot be adequately protected under the provisions of this Act (other than the resolution provisions) or under the Companies Act 1993.
- (3) In **subsection (2) and section 175(2)**, resolution provisions means this subpart, **subparts 6 to 8, and Schedule 2**.

175 Grounds on which associated person may be declared to be in resolution

- (1) The Bank may make a recommendation under **section 170** in respect of an associated person of a licensed insurer if it is satisfied on reasonable grounds that—
 - (a) 1 or more of the circumstances specified in **section 145(2)** apply; or
 - (b) the business and affairs of the licensed insurer are so closely connected with the associated person that the Bank will be unable to exercise effectively the powers conferred by this Part in relation to the insurer unless the associated person is in resolution; or

- (c) 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 associated person is in resolution 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 170** 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 or of the insurer cannot be adequately protected under the provisions of this Act (other than the resolution provisions) 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 170** 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 End of resolution

- (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 a licensed insurer or an associated person that is in resolution is no longer in resolution.
- (2) Despite **subsection (1)**, the recommendation of the Bank is not required if public money is involved in the resolution (within the meaning of **section 137ZM(2)**).
- (3) A licensed insurer or an associated person is also no longer in resolution if it is put into liquidation on the application of the Bank.
- (4) The resolution ends,—
 - (a) in the case of **subsection (1)**, at the date and time specified in the Order in Council; or
 - (b) in the case of **subsection (3)**, at the commencement of the liquidation.
- (5) If an Order in Council declares that a licensed insurer is no longer in resolution, every subsidiary of the insurer, except a subsidiary specified in the order, is also no longer in resolution (with effect at the same date and time specified under **subsection (4)(a)**).

Compare: 2023 No 35 s 282

177 Application of resolution provisions to other persons in resolution

- (1) References in **subparts 5 to 8 and Schedule 2** to a licensed insurer (or similar references) must be read as including references to another person in resolution (unless the context otherwise requires).
- (2) In this section, **another person in resolution** means any of the following persons if the person is in resolution:
 - (a) a subsidiary or any other associated person of a licensed insurer:
 - (b) a body corporate formed and registered under **clause 22 or 27 of Schedule 2**.
- (3) A covered bond SPV (as defined in section 404 of the Deposit Takers Act 2023) is not—
 - (a) an associated person for the purposes of **section 170**; or
 - (b) a subsidiary for the purposes of **section 171**.

Compare: 2023 No 35 ss 279, 283

Subpart 5—Moratorium and restriction on resolution trigger**178 Moratorium**

- (1) If a licensed insurer (**A**) is in resolution, no person may do any of the following:
 - (a) commence or continue a proceeding, including a proceeding by way of counterclaim, against A:
 - (b) issue an execution, attach a debt, or otherwise enforce or seek to enforce a judgment or an order obtained in respect of A:
 - (c) take any steps to put A into liquidation or voluntary administration:
 - (d) enter into possession of, sell, or appoint a receiver of A's property or property in respect of which A has an equity of redemption:
 - (e) exercise or continue a power or rights under, or in accordance with, a mortgage, charge, debenture, instrument, or other security interest over A's property:
 - (f) claim or recover, under a retention of title clause, hire purchase agreement, mortgage, lease, or security interest, any property in A's possession:
 - (g) determine or forfeit a tenancy, retake or re-enter premises, or exercise or continue a power or rights under or in connection with a lease, against A:
 - (h) exercise a right of set-off against A.
- (2) Nothing in **subsection (1)** limits or prevents the Bank from performing or exercising any functions, powers, or duties under this Act.

- (3) This section is subject to section 421(1) to (3) of the Deposit Takers Act 2023.
Compare: 2023 No 35 s 284

179 Restriction on resolution trigger

- (1) This section applies if a licensed insurer (**A**) is party to an agreement, whether the proper law of the agreement is the law of New Zealand or the law of any other jurisdiction.
- (2) Neither of the matters referred to in **subsection (3)** allows the agreement, or a party to the agreement (other than **A**), to do any of the following:
- (a) deny any liability or obligation under the agreement:
 - (b) accelerate or require the payment or performance of a liability or an obligation:
 - (c) terminate or close out any transaction relating to the agreement:
 - (d) enforce any security interest under the agreement.
- (3) The matters are as follows:
- (a) **A**, or an associated person of **A**, entering into resolution:
 - (b) the Bank or the Minister performing or exercising 1 or more functions, powers, or duties under **subpart 4**, this subpart, any of **subparts 6 to 8**, or **Schedule 2** in relation to **A** or an associated person of **A**.
- (4) This section continues to apply despite the end of the period of the moratorium under **clause 1 of Schedule 2**.
- (5) This section is subject to section 421(1) to (3) of the Deposit Takers Act 2023.
Compare: 2023 No 35 s 287

180 Additional provisions about moratorium and restriction on resolution trigger

Part 1 of Schedule 2 applies for the purposes of a resolution under this Act.

Subpart 6—Conduct of resolution

Bank must act as resolution authority

181 Bank is resolution authority

The Bank must act as the resolution authority in relation to a resolution of a licensed insurer.

Compare: 2023 No 35 s 298

182 Function of resolution authority

- (1) The Bank's function as the resolution authority is to ensure that a resolution of a licensed insurer is carried out in a way that furthers the purposes set out in **section 137ZM**.

- (2) The function includes performing or exercising the duties or powers imposed or conferred on the Bank under **subparts 4 to 8** and **Schedule 2**.

Compare: 2023 No 35 s 299

183 Bank must supervise resolution manager

- (1) The Bank as the resolution authority must supervise a resolution manager to ensure that the resolution manager efficiently and effectively performs or exercises the resolution manager's functions, powers, and duties.
- (2) *See—*
- (a) **section 197**, which requires a resolution manager to comply with the Bank's directions; and
 - (b) **section 198**, which requires a resolution manager to consult the Bank and have regard to the Bank's advice; and
 - (c) **sections 199 and 199A**, which require a resolution manager to report to the Bank.

Compare: 2023 No 35 s 300

184 Bank must regularly report to Minister on conduct of resolution

- (1) The Bank must regularly report to the Minister on the conduct of a resolution.
- (2) The reports must—
- (a) be made when required by the Minister; and
 - (b) contain the information required by the Minister.

Compare: 2023 No 35 s 301

Resolution manager has management and control of insurer

185 Management of licensed insurer vests in resolution manager

The management of a licensed insurer in resolution vests in the resolution manager on and after the time when it enters resolution.

Compare: 2023 No 35 s 302

186 Directors, managers, and other persons may act only with resolution manager's permission

- (1) If a licensed insurer is in resolution, it is not lawful or competent for a director, a relevant officer, any manager, or any other person to be engaged in the management or conduct of its business, or to act as an officer, agent, or employee of the insurer, except with the permission of the resolution manager and to the extent that the permission extends.
- (2) This section is subject to section 421(1) to (3) of the Deposit Takers Act 2023.

Compare: 2023 No 35 s 303

*Resolution manager's general powers***187 Resolution manager's general powers**

The resolution manager has all of the powers, rights, and authorities that are necessary or desirable to enable the resolution manager to further the purposes set out in **section 137ZM** in connection with the resolution of a licensed insurer.

Compare: 2023 No 35 s 304

188 Resolution manager has powers of insurer and of its shareholders, members, and board

The resolution manager has—

- (a) all the powers, rights, and privileges that the licensed insurer in resolution has under any agreement or otherwise; and
- (b) in the case of a body corporate in resolution,—
 - (i) all the powers of the shareholders or members in general meeting; and
 - (ii) all the powers of the board of directors of the body corporate; and
- (c) in the case of a partnership in resolution, all the powers exercisable by a partner or partners; and
- (d) in the case of any other unincorporated body of persons in resolution, all the powers exercisable by its governing body.

Compare: 2023 No 35 s 305

189 Resolution manager may carry on business of licensed insurer

The resolution manager may carry on all or any part of the business of the licensed insurer in resolution and has, in relation to the insurer, all of the powers, rights, and authorities that are necessary or desirable to carry on that business.

Compare: 2023 No 35 s 306

190 Additional provisions about conduct of resolution

Part 2 of Schedule 2 applies for the purposes of a resolution under this Act.

*Regulations may confer additional powers***191 Bank's or resolution manager's powers under regulations**

- (1) The Governor-General may, by Order in Council, make regulations conferring on the Bank or the resolution manager ancillary or additional powers necessary or desirable for the purposes of this subpart.
- (2) Regulations made under this section—

- (a) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
- (b) must be confirmed by an Act (*see* subpart 3 of Part 5 of the Legislation Act 2019).

Compare: 2023 No 35 s 333

Court may give directions

192 Court may give directions

- (1) The court may, on an application made by the Bank or the resolution manager, give directions concerning any of the following:
 - (a) the business or property of a licensed insurer in resolution:
 - (b) the management or administration of that business or property:
 - (c) the exercise of any powers under this subpart or **Schedule 2**.
- (2) Every person is bound by the directions.
- (3) The resolution manager may apply only with the prior approval of the Bank.

Compare: 2023 No 35 s 334

Subpart 7—Minister may give directions

193 When this subpart applies

- (1) This subpart applies if—
 - (a) either or both of the following apply:
 - (i) the Bank proposes to exercise a power under this Part or **Schedule 2** in a particular manner in relation to a licensed insurer (A) that is in resolution:
 - (ii) the Minister considers that the Bank should exercise a power under this Part or **Schedule 2** in a particular manner in relation to A; and
 - (b) public money is involved in the resolution; and
 - (c) the Minister is satisfied that,—
 - (i) in the case of **paragraph (a)(i)**, the exercise of the power in the manner referred to in that subparagraph would present a material risk to the prudent management of public money:
 - (ii) in the case of **paragraph (a)(ii)**, the exercise of the power in the manner referred to in that subparagraph would reduce a material risk to the prudent management of public money.
- (2) In this subpart, **public money is involved** in a resolution if the Crown has done any of the following in connection with dealing with A's financial distress or other difficulties:

- (a) incurred expenses or capital expenditure or made a capital injection:
- (b) given a guarantee or an indemnity:
- (c) incurred a liability or made a commitment.

Example

Public money is involved in relation to a Crown guarantee or indemnity, a Crown loan, or a Crown acquisition of A's shares.

- (3) However, public money is not involved in a resolution merely because the Bank uses its own financial resources in the resolution.

Compare: 2023 No 35 s 349

194 Minister may direct Bank relating to exercise of resolution power

The Minister may direct the Bank to do 1 or more of the following:

- (a) not exercise a power in the manner referred to in **section 193(1)(a)(i)**:
- (b) exercise a power in the manner referred to in **section 193(1)(a)(i)** only on the terms and conditions that are specified in the direction:
- (c) exercise a power in the manner referred to in **section 193(1)(a)(ii)**:
- (d) exercise a power in the manner referred to in **section 193(1)(a)(ii)** on the terms and conditions that are specified in the direction:
- (e) have regard to the matters specified in the direction before exercising a power:
- (f) take any other action that is specified in the direction to avoid or minimise, or otherwise manage, the risk referred to in **section 193(1)(c)**.

Compare: 2023 No 35 s 350

195 Procedural requirements

- (1) The Minister may give a direction under this subpart only if the Minister is satisfied that—

- (a) giving the direction is necessary or desirable for the purpose of avoiding or minimising, or otherwise managing, the risk referred to in **section 193(1)(c)**; and
- (b) giving the direction is the most appropriate way of avoiding or minimising, or otherwise managing, the risk; and
- (c) the direction is not inconsistent with any of the purposes in **section 137ZM(1)(a) and (b)**; and
- (d) the extent of the direction is not broader than is reasonably necessary to address the matters that gave rise to the direction.

- (2) This section does not limit section 174 of the Reserve Bank of New Zealand Act 2021, which imposes additional procedural requirements for the direction.

Compare: 2023 No 35 s 351

Subpart 8—Resolution manager

Key duties

196 Resolution manager must act to further purposes of this Part

- (1) A resolution manager must perform or exercise their functions, powers, and duties efficiently and effectively in a way that furthers the purposes set out in **section 137ZM**.
- (2) The powers conferred on a resolution manager of a life insurer are subject to the requirements of subpart 3 of Part 2 (which relates to statutory funds).

Compare: 2023 No 35 s 352

197 Resolution manager must comply with directions of Bank

A resolution manager must comply with any directions given in writing by the Bank relating to the manager's performance or exercise of any functions, powers, or duties.

Compare: 2023 No 35 s 353

198 Resolution manager must consult and have regard to Bank advice

A resolution manager must, when performing or exercising any functions, powers, or duties,—

- (a) consult the Bank to the extent required by the Bank; and
- (b) have regard to the Bank's advice.

Compare: 2023 No 35 s 354

199 Resolution manager must regularly report as required by Bank

A resolution manager must, in the manner specified by the Bank, provide the reports that the Bank may require about the state of the affairs, business, and resolution of the licensed insurer in resolution.

Compare: 2023 No 35 s 355

199A Resolution manager must report annually on conduct of resolution

A resolution manager must, within 4 months after the balance date of a licensed insurer (A) that is in resolution,—

- (a) prepare a report on the conduct of the resolution of A and of its associated persons during the accounting period ending on that date; and
- (b) lodge the report with the Registrar of Financial Service Providers together with the documents that are lodged under section 461H of the FMCA in relation to A; and
- (c) give the Bank a copy of those documents.

Compare: 2023 No 35 s 356

199B Additional provisions about resolution manager

Part 3 of Schedule 2 applies for the purposes of a resolution under this Act.

Subpart 9—Miscellaneous

199C Licensed insurer not entitled to be informed about exercise of powers under this Part

None of the following have a right to be consulted or informed about the exercise, or possible exercise, of any powers conferred by this Part or to make representations to any person about the exercise, or possible exercise, of those powers:

- (a) a licensed insurer, an associated person, or a subsidiary:
- (b) a director or an employee of a person referred to in **paragraph (a)**.

Compare: 2023 No 35 s 424

63 Section 200 amended (Lloyd’s underwriters must not carry on insurance business in New Zealand unless Lloyd’s holds licence)

Replace section 200(2) with:

- (2) A Lloyd’s underwriter who fails to comply with subsection (1) commits an offence and is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 9 months or to a fine not exceeding \$200,000 (or both):
 - (b) in any other case, to a fine not exceeding \$1,500,000.

64 Section 201 amended (Lloyd’s may apply for licence on behalf of underwriting members)

Replace section 201(4) with:

- (4) Lloyd’s commits an offence if it provides information to the Bank for the purposes of the application that false or misleading in a material particular, and is liable, on conviction, to a fine not exceeding \$1,500,000.

65 Section 204 amended (Lloyd’s underwriters may carry on insurance business in New Zealand if Lloyd’s holds licence)

Replace section 204(2)(a) with:

- (a) **subpart 1A of Part 2:**
 - (aa) **section 54A:**
 - (ab) **sections 55 to 56O** (but only to the extent that those sections relate to standards under **section 56F** (solvency) or **section 56I** (disclosure of information):
 - (ac) sections 60 to 72:

66 Section 205 amended (Issue of licence to Lloyd's)

In section 205(1)(e), delete “(having regard to the requirements of section 73(2))”.

67 Section 208 replaced (Provisions that do not apply in respect of Lloyd's or Lloyd's underwriters)

Replace section 208 with:

208 Provisions that do not apply in respect of Lloyd's or Lloyd's underwriters

Sections 15 to **43C**, 76 to 81, and 244 to 248 do not apply to Lloyd's or Lloyd's underwriters (except to the extent that any of those provisions are applied under section 207(5)).

68 Sections 215 to 217A and cross-heading above section 215 repealed

Repeal sections 215 to 217A and the cross-heading above section 215.

69 Section 218 amended (Prohibition against falsely holding out New Zealand connection)

(1) In section 218(3)(a), replace “\$50,000” with “\$100,000”.

(2) Replace section 218(3)(b) with:

(b) in any other case, to a fine not exceeding \$1,500,000.

70 Section 219 amended (Certain New Zealand persons and overseas companies prohibited from using certain words in name)

(1) In section 219(3)(a), replace “\$50,000” with “\$100,000”.

(2) In section 219(3)(b), replace “\$200,000” with “\$1,500,000”.

71 Sections 222 to 228 and cross-heading above section 222 repealed

Repeal sections 222 to 228 and the cross-heading above section 222.

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

(1) In section 232(2)(a), replace “section 38” with “**section 38A**”.

(2) Repeal section 232(2)(b).

73 Sections 233 and 235 and cross-heading above section 233 replaced

Replace sections 233 and 235 and the cross-heading above section 233 with:

*Bank's power to specify how things are done***233 When sections 234 to 236B apply**

- (1) **Sections 234 to 236B** apply if this Act provides for any thing to be done in the manner specified by the Bank (including where the manner is specified in a notice given or issued by the Bank).

Examples

An application for a licence must be made in the manner specified by the Bank.

The Bank may require information to be given under **section 121** in a manner specified in a notice given or issued by the Bank.

- (2) In **sections 234 to 236B**, a **relevant person** is a person who must or may do the thing.

Guidance note

See *also* section 292 of the Reserve Bank of New Zealand Act 2021, which allows regulations to be made that may require a person to pay fees or charges in connection with the Bank's performance or exercise of any of its functions, powers, or duties.

Compare: 2023 No 35 s 448

234 Bank may require particular persons to comply with specified requirements

- (1) The Bank may give a notice to 1 or more named relevant persons.
 (2) The notice may specify 1 or more of the matters referred to in **section 236**.

Compare: 2023 No 35 s 449

235 Bank may require class of persons to comply with requirements

- (1) The Bank may issue under this section a notice that applies to a class of relevant persons.
 (2) The notice may specify 1 or more of the matters referred to in **section 236**.
 (3) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2023 No 35 s 450

236 Requirements that may be specified

A notice under **section 234 or 235** may specify 1 or more of the following:

- (a) by whom, when, where, and how the thing must be done;
 (b) the form that must be used in connection with doing the thing;
 (c) what information or other evidence or documents must be provided in connection with the thing:

- (d) requirements with which information, evidence, or documents that are provided in connection with the thing must comply.

Compare: 2023 No 35 s 451

236A Bank may also require further information

A relevant person must also provide to the Bank the information that is required by the Bank to assist the Bank in performing or exercising its functions, powers, or duties in relation to the thing (for example, to supply further information in support of an application or request).

Compare: 2023 No 35 s 452

236B Bank may refuse to act if requirements not complied with

- (1) The Bank may refuse to perform or exercise a function, power, or duty if—
- (a) a thing is not done in the manner specified by the Bank in a notice given or issued under **section 234 or 235**; or
 - (b) a person fails to comply with **section 236A**.

Example

An applicant for a licence does not apply in the manner specified by the Bank in a notice issued under **section 235**.

The Bank may refuse to consider the application.

- (2) This section does not limit any other provision of this Act that provides for an offence, a penalty, or any other consequence for a failure to do a thing in the manner specified by the Bank.

Compare: 2023 No 35 s 453

74 Section 237 amended (Regulations)

- (1) Before section 237(1)(a), insert:
- (aa) declaring a class or classes of contracts or transactions to be contracts of insurance for the purposes of this Act;
 - (ab) if a class or classes of contracts or transactions are declared to be contracts of insurance under **paragraph (aa)**, declaring that a person or class of person is, or is to become, the insurer that is liable under the class or classes of contracts or transactions:
- (2) In section 237(1)(d), delete “, 38(3),”.
- (3) In section 237(1)(f), delete “or 49(3)(d)”.
- (4) Repeal section 237(1)(e) and (g).
- (5) In section 237(1)(v), replace “226” with “**137ZJ**”.
- (6) After section 237(2), insert:
- (2A) The Bank must, before recommending regulations under **subsection (1)(aa) or (ab)**—

- (a) be satisfied that the declaration is necessary or desirable in order to promote any of the purposes set out in section 3(1); and
- (b) in the case of **subsection (1)(aa)**, has had regard to the economic substance of the contracts or transactions that are the subject of the declaration; and
- (c) in the case of **subsection (1)(ab)**, has had regard to the nature of the business activities carried on by the person or class of persons that are the subject of the declaration.

75 Section 238 amended (Regulations may provide for exemptions)

Repeal section 238(1)(a)(i).

Part 2

Other amendments

76 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

77 New Schedule 2 inserted

After Schedule 1, insert the **Schedule 2** set out in **Schedule 2** of this Act.

78 Consequential amendments

Amend the Acts specified in **Schedule 3** as set out in that schedule.

Schedule 1
New Schedule 1AA inserted

s 76

Schedule 1AA
Transitional, savings, and related provisions

s 13

Part 1
Provisions relating to Insurance (Prudential Supervision)
Amendment Act 2026

[To come]

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ss 180, 190, 199B

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	Moratorium and restriction on resolution trigger	
1	Period of moratorium	
(1)	The moratorium under section 178(1) ends on the earlier of the following:	
(a)	the end of the resolution:	

- (b) the close of the date that is 12 months after the date on which the licensed insurer enters resolution.
- (2) However, the Bank may, by notice in the *Gazette*, extend the period of the moratorium under **section 178(1)** beyond the period referred to in **subsection (1)(b)** for a further period not exceeding 12 months, and may in the same manner extend that period on successive occasions.
- (3) The Bank may extend the period of the moratorium only if it is satisfied that it is necessary or desirable to do so for either or both of the purposes in **section 137ZM(1)(a) and (b)**.
- (4) The Bank may issue a notice to extend the period of the moratorium only before the end of the period to be extended.
- (5) An extension may relate separately to a licensed insurer and any 1 or more associated persons of the insurer.
- Compare: 2023 No 35 s 285
- 2 Bank must publish notice on Internet site**
- The Bank must, as soon as practicable, publish a notice under **clause 1(2)** on the Bank's Internet site.
- Compare: 2023 No 35 s 286
- 3 Person may commence or continue proceeding with leave**
- Despite **sections 178 and 179**, a person may commence or continue a proceeding against the licensed insurer for the purpose of determining whether a right or liability exists if the leave of the Bank or the court is first obtained.
- Compare: 2023 No 35 s 288
- 4 Bank may waive application of moratorium and restriction on resolution trigger**
- (1) Despite **sections 178 and 179**, the Bank may waive the application in whole or in part of either or both of those sections to a creditor or class of creditors in respect of the whole or part of a claim of, or security interest held by, the creditor or class of creditors.
- (2) This section does not apply to **section 178(1)(c)**.
- Compare: 2023 No 35 s 289
- 5 Moratorium and restriction on resolution trigger do not affect existence or priority of security interest**
- Sections 178 and 179** do not affect the existence of any security interest over the property of the licensed insurer or its priority over other debts.
- Compare: 2023 No 35 s 290

6 Moratorium does not limit or prevent obligations incurred or rights granted after insurer enters resolution

Section 178(1)(a), (b), and (d) to (h) does not limit or prevent a person from taking any of the actions specified in those paragraphs in relation to an obligation incurred or a right granted under a deed, an instrument, a trust, or an agreement entered into by the licensed insurer after the date on which, and the time at which, the insurer enters resolution.

Compare: 2023 No 35 s 291

7 Moratorium and restriction on resolution trigger do not limit or affect certain rights under netting agreement or rights under rules of designated FMI

- (1) In the case of a netting agreement to which sections 310A to 310O of the Companies Act 1993 apply,—
- (a) **section 178(1)(h)** does not apply to a right of set-off provided for in the netting agreement; and
 - (b) **sections 178(1) and 179** do not limit or prevent the exercise of any of the following rights under the netting agreement:
 - (i) the termination, in accordance with the netting agreement, of all or any transactions that are subject to the netting agreement by reason of the occurrence of an event that is specified in the netting agreement and is an event (including entering resolution) that occurs not later than when the licensed insurer enters resolution;
 - (ii) the taking of an account, in accordance with the netting agreement, of all money due between the parties to the netting agreement in respect of transactions affected by the termination; and
 - (c) **sections 178(1) and 179** do not limit or prevent the exercise of any right referred to in **section 178(1)(d) to (f)** in respect of any property of the licensed insurer (A) to the extent that the right is exercised to enforce, or to assist in enforcing, the due performance, by A, of obligations entered into by A under a recognised multilateral netting agreement (within the meaning of section 310A of the Companies Act 1993).
- (2) In the case of a derivative, a relevant security interest, or a specified instrument,—
- (a) **subsection (1)(b)** does not apply to the extent that it relates to **section 179**; but instead
 - (b) **clause 8** applies.
- (3) If subpart 5 of Part 3 of the Financial Market Infrastructures Act 2021 applies to a transaction or an arrangement,—

- (a) **sections 178(1) and 179** do not limit or prevent the exercise of any right relating to the calculation of a netted balance under the rules of the designated FMI; and
- (b) **sections 178(1) and 179** do not limit or prevent the exercise of any right referred to in **section 178(1)(d) to (f)** in respect of any property of the licensed insurer (A) if the right that is exercised—
 - (i) is provided under the rules of the designated FMI; and
 - (ii) has been granted to secure, or to assist in securing, the due performance, by A, of obligations entered into by A under those rules.
- (4) In this clause,—
 - (a) **designated FMI, netting, and participant** have the meanings given in section 5 of the Financial Market Infrastructures Act 2021; and
 - (b) **netted balance** means any amount calculated in accordance with the rules of a designated FMI as the net debit payable by, or on behalf of, a participant of the designated FMI to, or on behalf of, another participant of that designated FMI for all or any claims or obligations to which those rules apply; and
 - (c) **rules** is to be read in accordance with section 35 of the Financial Market Infrastructures Act 2021.

Compare: 2023 No 35 s 292

8 Moratorium does not limit or prevent certain things in relation to derivatives, etc

- (1) **Section 178(1)** does not limit or prevent an agreement, or a party to an agreement, from doing any of the things referred to in **subclause (2)** in relation to a derivative, a relevant security interest, or a specified instrument.
- (2) The things are as follows:
 - (a) denying any liability or obligation under the agreement:
 - (b) accelerating or requiring the payment or performance of a liability or an obligation:
 - (c) terminating or closing out any transaction relating to the agreement:
 - (d) enforcing any security interest under the agreement.
- (3) In this clause and **clauses 7, 9, and 10**,—

collateral has the same meaning as in section 62A of the Corporations (Investigation and Management) Act 1989

derivative means a derivative within the meaning of section 8(4) of the FMCA (but disregarding any specified declaration)

possession has the same meaning as in section 62A of the Corporations (Investigation and Management) Act 1989

qualifying derivative has the same meaning as in section 62A of the Corporations (Investigation and Management) Act 1989

relevant security interest means a security interest that secures payment or performance of an obligation under or in relation to a qualifying derivative

specified declaration means a declaration under subpart 3 of Part 9 of the FMCA other than a declaration that has been specified in the regulations for the purposes of this definition

specified instrument means an agreement of a kind that is—

- (a) prescribed in the regulations; and
- (b) entered into in connection with a netting agreement (within the meaning of section 310A of the Companies Act 1993).

Compare: 2023 No 35 s 293

9 Restriction on resolution trigger does not limit or prevent certain things in relation to derivatives, etc, after stay

- (1) **Section 179** does not limit or prevent an agreement, or a party to an agreement, from doing any of the things referred to in **subclause (2)** in relation to a derivative, a relevant security interest, or a specified instrument if the thing is done after—
 - (a) the default time, unless **paragraph (b)** applies (*see subclause (4)*); or
 - (b) an earlier or a later time specified by the Bank in a notice issued under **clause 10**.
- (2) The things are as follows:
 - (a) denying any liability or obligation under the agreement;
 - (b) accelerating or requiring the payment or performance of a liability or an obligation;
 - (c) terminating or closing out any transaction relating to the agreement;
 - (d) enforcing any security interest under the agreement.
- (3) However, in the case of a relevant security interest, **subclause (1)** applies only if, before the agreement or party does the thing referred to in **subclause (2)**, the collateral is delivered, transferred, held, registered, or otherwise designated so as to be in the possession or under the control of—
 - (a) the enforcing counterparty; or
 - (b) another person (who is not the grantor) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.
- (4) In this clause and **clause 10**, **default time** means the close of the day after the date on which the licensed insurer enters resolution.
- (5) Section 62B of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of **subclause (3)**

(and those modifications include treating references to section 42(10)(b) of that Act as references to **subclause (3)** of this clause).

Compare: 2023 No 35 s 294

10 Bank may reduce or extend stay

- (1) The Bank may, before the default time, issue a notice that specifies an earlier or a later time for the purposes of **clause 9(1)(b)** in respect of a licensed insurer (A) that is in resolution.
- (2) The time that is specified may be—
 - (a) before the default time; or
 - (b) after the default time if the Bank is satisfied of all of the matters set out in **clause 11**.
- (3) The notice may relate to all things referred to in **clause 9(2)** or to a class or classes of those things.

Compare: 2023 No 35 s 295

11 Matters Bank must be satisfied of when extending stay

The matters referred to in **clause 10(2)(b)** are that—

- (a) A is able to meet all of the following liabilities as and when those liabilities become due and payable:
 - (i) A's liabilities under all netting agreements to which sections 310A to 310O of the Companies Act 1993 apply;
 - (ii) A's liabilities in respect of security interests over collateral to the extent that the security interests secure payment or performance of obligations under or in relation to derivatives;
 - (iii) A's liabilities that are subject to netting under the rules of a designated FMI; and
- (b) A is able to pay its debts as they become due in the normal course of business; and
- (c) either—
 - (i) A complies with the minimum capital requirements (if any) to which it is subject under an applicable standard; or
 - (ii) there are satisfactory arrangements in place to ensure that A meets all of its liabilities referred to in **paragraph (a)** as and when those liabilities become due and payable and those arrangements will remain in place until A complies with the requirements referred to in **subparagraph (i)** or the resolution ends, whichever occurs first.

Compare: 2023 No 35 s 296

12 Publication of notice

- (1) The Bank must, as soon as practicable,—
 - (a) publish any notice issued under **clause 11** on the Bank’s Internet site; and
 - (b) notify the issue of the notice in the *Gazette*.
- (2) The notice may take effect at any time after it is published under **subclause (1)(a)**.
- (3) The notice cannot be varied or revoked.

Compare: 2023 No 35 s 297

Part 2

Conduct of resolution

Resolution manager’s miscellaneous powers

13 Resolution manager may pay creditors and compromise claims

The resolution manager may do 1 or more of the following in relation to a licensed insurer in resolution:

- (a) pay, in whole or in part, any creditor or class of creditors of the insurer:
- (b) make a compromise or an arrangement with a creditor, or person claiming to be a creditor, of the insurer:
- (c) compromise all calls, debts, and claims subsisting, or supposed to subsist, between the insurer and any other person:
- (d) deal with all questions relating to the property of the insurer:
- (e) give a complete or partial discharge in relation to any calls, debts, or claims subsisting, or supposed to subsist, between the insurer and any other person.

Compare: 2023 No 35 s 307

14 Resolution manager may offer and issue insurer’s financial products

- (1) The resolution manager may offer and issue any financial products in respect of which a licensed insurer in resolution (**A**) is the issuer (for example, shares in A or debt securities in respect of which A is liable to repay money owing under the securities).
- (2) An offer and issue of financial products may be made to any person or persons, and on any terms and conditions, that the resolution manager thinks fit.

Compare: 2023 No 35 s 308

15 Resolution manager may disclaim onerous property

- (1) The resolution manager has all of the powers conferred on a liquidator of a company by section 269 of the Companies Act 1993 and may exercise the

powers in the same manner as if the resolution manager were the liquidator of a company in liquidation under that Act.

- (2) Section 269 of the Companies Act 1993 applies to the disclaimer of any property of the licensed insurer as if the property were property of a company to which that section applied.
- (3) This clause does not limit **section 187**.
Compare: 2023 No 35 s 309

16 Resolution manager may trace property improperly disposed of

- (1) This clause applies if—
 - (a) any property has been acquired by a person in circumstances where it is just and equitable that the person should hold it on trust for a licensed insurer in resolution; or
 - (b) any property has been improperly disposed of, whether or not the property has become subject to a trust.
- (2) The court may, if it thinks fit, make an order—
 - (a) that the property be transferred or delivered to the resolution manager;
 - (b) that any person who acquired or received the property, or their administrator, pay to the resolution manager a sum not exceeding the value of the property.
- (3) For the purpose of giving effect to the order, the court may make any further order that it thinks fit.
- (4) This clause and **clause 17** do not limit the Companies Act 1993.
Compare: 2023 No 35 s 310

17 Order may not deprive good-faith purchaser for value

An order under **clause 16** does not deprive any other person of any estate or interest in the property if the estate or interest was acquired in good faith and for valuable consideration.

Compare: 2023 No 35 s 311

18 Resolution manager may change balance date

- (1) The resolution manager may change the balance date of a licensed insurer that is in resolution to any date that the resolution manager thinks fit.
- (2) The Commissioner of Inland Revenue's approval of the change is not required.
- (3) Sections 42 and 43 of the Financial Reporting Act 2013 do not apply in relation to the change.
Compare: 2023 No 35 s 312

*Bank may investigate affairs of licensed insurer***19 Bank's investigation powers**

- (1) In relation to a licensed insurer in resolution, the Bank has all the powers conferred, and all the duties imposed, on a person appointed under **section 130(2)**.
- (2) The following provisions apply, with any necessary modifications, as if the Bank were appointed under **section 130(2)**:
 - (a) **sections 131** and 132 (which relate to powers to carry out an investigation of the affairs of a licensed insurer); and
 - (b) **section 133** (which sets out offences in relation to investigations).
- (3) **Subclause (2)** does not limit **subclause (1)**.
- (4) This section does not limit any other power conferred on the Bank (for example, powers under Part 3).

Compare: 2023 No 35 s 313

*Bank may form body corporate to acquire New Zealand business***20 Bank may form body corporate to acquire New Zealand business**

- (1) If an overseas licensed insurer (**A**) is in resolution, the Bank may do 1 or more of the following:
 - (a) form and register a body corporate (**B**) under the Companies Act 1993:
 - (b) subscribe for or acquire, as trustee for **A**, all or any of **B**'s shares:
 - (c) issue all or any of **B**'s shares as fully or partly paid on the terms and conditions that the Bank thinks fit.
- (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, and liabilities of **A** relating to its New Zealand business will vest in **B** on a date specified in the order.
- (3) The property, rights, and liabilities of **A** vest in **B** on the date specified.

Compare: 2023 No 35 s 314

21 Vesting does not affect insurer's obligations or place it in breach

A vesting under **clause 20**—

- (a) does not reduce, extinguish, or affect any obligation or liability of the overseas licensed insurer (**A**); and
- (b) does not constitute a breach or repudiation of any agreement entered into by **A** with any person.

Compare: 2023 No 35 s 315

22 Body corporate is also subject to resolution

- (1) The body corporate (**B**) referred to in **clause 20** must be treated as being in resolution.
- (2) The resolution manager of the licensed insurer is the resolution manager of B as if that resolution manager had been appointed under **clause 56**, and the provisions of Part 4 of this Act and this schedule apply accordingly.
- (3) **Subclause (2)** does not prevent the Bank from exercising a power to terminate a resolution manager's appointment or to replace a resolution manager.
- (4) The period of moratorium under **subpart 5 of Part 4** is initially the same as the period of moratorium that applies to the licensed insurer.
- (5) However, the Bank may exercise a power under **clause 1(2)** in relation to B separately from the licensed insurer.

Compare: 2023 No 35 s 316

23 Vesting of property or rights subject to security interest

- (1) An order may be made under **clause 20** vesting any property and rights of an overseas licensed insurer (**A**) in a body corporate (**B**) despite the existence, or the terms and conditions, of any security interest over the property, or over those rights, in favour of any other person.
- (2) Any property or rights that are declared to vest under an order made under **clause 20** in B and that are subject to a security interest in favour of any other person continue to be subject to the security interest.

Compare: 2023 No 35 s 317

24 Proof of vesting

- (1) A registrar is not obliged solely by reason of **clause 20** to change the name of the licensed insurer (**A**) referred to in that clause to that of the body corporate (**B**) formed and registered under that clause in any register or in any document.
- (2) If B presents to a registrar or any other person an instrument that meets the requirements of **subclause (3)**, the instrument is, in the absence of evidence to the contrary, sufficient proof that the property that is the subject of the instrument is vested in B.
- (3) The requirements are that the instrument—
 - (a) is executed or purports to be executed by B; and
 - (b) relates to any property held by A before the date specified in an Order in Council made under **clause 20**; and
 - (c) contains a statement that the property has become vested in B under that clause.
- (4) **Subclause (2)** applies whether or not the instrument is or includes an instrument of transfer.

- (5) In this clause, **registrar** means the Registrar-General of Land, a Registrar of Deeds, or any other person required under any legislation to keep any register.

Compare: 2023 No 35 s 318

Bank may dispose of business undertaking or property, rights, or liabilities

25 Bank's disposal power

- (1) The Bank may do 1 or more of the following in relation to a licensed insurer in resolution (**A**):
- (a) sell, transfer, or otherwise dispose of the whole or any part of the business undertaking of A:
 - (b) sell, transfer, or otherwise dispose of any property or rights of A:
 - (c) transfer or otherwise dispose of any liabilities of A:
 - (d) transfer any financial products (in respect of which A is the issuer).
- (2) A sale, transfer, or disposal may be made to any person or persons, and on any terms and conditions, that the Bank thinks fit.

Example

Insurer A is in resolution. A's business has 3 main parts: [to come].

The Bank transfers A's [to come] business to another insurer.

The Bank then forms a company B under **clause 26** to act as a bridge institution. The Bank transfers the [to come] business to B.

The Bank also forms a company C under **clause 26** to manage A's other property. The Bank transfers the property to C.

Compare: 2023 No 35 s 319

26 Bank may dispose of business undertaking, etc, to bridge institution or asset management vehicle

- (1) For the purposes of **clause 25**, the Bank may do 1 or more of the following:
- (a) form and register a body corporate (**B**) under the Companies Act 1993:
 - (b) subscribe for or acquire all or any of the shares of B:
 - (c) make 1 or more sales, transfers, or dispositions to B under **clause 25(1)(a) to (c)**:
 - (d) offer, issue, or sell all or any of the shares in B to any person, credited as fully or partly paid, on the terms and conditions that the Bank thinks fit:
 - (e) sell, transfer, or dispose of the whole or any part of the business undertaking of B to any 1 or more persons on the terms and conditions that the Bank thinks fit.
- (2) This clause does not limit any other powers of the Bank.

Compare: 2023 No 35 s 320

27 Body corporate is also subject to resolution

- (1) The body corporate (**B**) referred to in **clause 26** must be treated as being in resolution.
- (2) However, **subclause (1)** does not apply if, before B is formed and registered, the Bank publishes a notice in the *Gazette* that states—
 - (a) that the Bank intends to form and register a body corporate under **clause 26**; and
 - (b) B's proposed name; and
 - (c) that **subclause (1)** will not apply to B.
- (3) If **subclause (1)** applies, the resolution manager of the licensed insurer is the resolution manager of B as if that resolution manager had been appointed under **clause 56**, and the provisions of Part 4 of this Act and this schedule apply accordingly.
- (4) **Subclause (3)** does not prevent the Bank from exercising a power to terminate a resolution manager's appointment or to replace a resolution manager.
- (5) If **subclause (1)** applies, the period of moratorium for B under **subpart 5 of Part 4** is initially the same as the period of moratorium that applies to the licensed insurer.
- (6) However, the Bank may exercise a power under **clause 1(2)** in relation to B separately from the licensed insurer.

Compare: 2023 No 35 s 321

28 Consents not required under other legislation or agreement, and transactions do not constitute breach

- (1) The provisions of any legislation or agreement requiring any consent, licence, permission, clearance, or other authority do not apply to any of the following:
 - (a) a sale, transfer, or other disposition under **clause 25(1)(a) to (c) or 26(1)(c) or (e)**;
 - (b) an offer, issue, sale, transfer, or other disposition of financial products under **clause 14, 25(1)(d), or 26(1)(d)**.
- (2) A sale, transfer, disposition, offer, or issue referred to in **subclause (1)** does not constitute a breach or repudiation of any agreement entered into by the licensed insurer with any person.

Compare: 2023 No 35 s 322

29 Bank may sell, transfer, or dispose of property despite security interest

A Bank may exercise a power under **clause 25 or 26** in respect of any property despite the existence, and the terms and conditions, of any security interest over the property in favour of any other person.

Compare: 2023 No 35 s 323

30 When proceeds of sale of licensed insurer's property must be paid to holder of security interest

- (1) This clause applies if—
 - (a) the Bank sells, transfers, or otherwise disposes of any property under **clause 25(1)**; and
 - (b) the property is subject to a security interest (other than a security interest of the kind described in **clause 33**).
- (2) The person entitled to the security interest must be paid out of the proceeds of sale, transfer, or other disposition in priority to all other claims other than the Bank's costs in selling, transferring, or otherwise disposing of the property.

Compare: 2023 No 35 s 324

31 When property continues to be subject to security interest

If the Bank sells, transfers, or otherwise disposes of any property of the licensed insurer to a body corporate formed and registered under **clause 26(1)(a)** and the property is subject to a security interest, the property continues to be subject to the security interest.

Compare: 2023 No 35 s 325

32 When proceeds of sale of shares or property of new body corporate must be paid to holder of security interest

- (1) This clause applies if—
 - (a) the Bank sells, transfers, or otherwise disposes of any shares in B, and any property of B is subject to a security interest (other than a security interest of the kind described in **clause 33**); or
 - (b) the Bank sells, transfers, or otherwise disposes of any property of B, and the property is subject to a security interest (other than a security interest of the kind described in **clause 33**).
- (2) The person entitled to the security interest must be paid out of the proceeds of sale, transfer, or other disposition in priority to all other claims other than the Bank's costs in selling, transferring, or disposing of the shares or property.
- (3) In this clause, **B** is a body corporate that is formed and registered under **clause 26(1)(a)**.

Compare: 2023 No 35 s 326

33 Kind of security interest referred to in various clauses

- (1) The kind of security interest referred to in **clauses 30 and 32** is a security interest that—
 - (a) is over all or any part of the licensed insurer's or body corporate's accounts receivable and inventory or all or any part of either of them; and

- (b) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and
 - (c) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the licensed insurer entered resolution and that arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of the account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and
 - (d) is not a security interest referred to in **subclause (3)**.
- (2) In this section, **account receivable**, **inventory**, **new value**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.
- (3) For the purposes of **subclause (1)(d)**, the security interest is a security interest over accounts receivable, inventory, or both to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative and—
- (a) the counterparties to the derivative are—
 - (i) 2 qualifying counterparties; or
 - (ii) a qualifying counterparty and an overseas person; and
 - (b) before the exercise of rights to enforce the security interest, the collateral is delivered, transferred, held, registered, or otherwise designated so as to be in the possession or under the control of—
 - (i) the enforcing counterparty; or
 - (ii) another person (who is not the grantor) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.
- (4) Terms and expressions defined in section 62A of the Corporations (Investigation and Management) Act 1989 and used in **subclause (3)** have in that subclause the same meanings as in that section.
- (5) Section 62B of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of **subclause (3)(b)** (and those modifications include treating references to section 42(10)(b) of that Act as references to **subclause (3)(b)** of this clause).

Compare: 2023 No 35 s 327

34 Proof of transactions

- (1) **Subclause (2)** applies if—
- (a) a person presents to a registrar an instrument transferring or otherwise disposing of any property of a licensed insurer or any shares in, or prop-

erty of, a body corporate formed and registered under **clause 26(1)(a)**;
and

- (b) the instrument—
 - (i) is executed, or purports to be executed, by or on behalf of the licensed insurer or body corporate; and
 - (ii) contains a statement that the transfer or other disposition of the property of the insurer, or the shares in, or property of, the body corporate, is made under **clause 25 or 26**.
- (2) The instrument is, in the absence of evidence to the contrary, sufficient proof that the transfer or other disposition is made under **clause 25 or 26**.
- (3) If the resolution manager presents to a registrar a certificate signed by or on behalf of the resolution manager that states that the amount secured by a security interest over any property of a licensed insurer or a body corporate formed and registered under **clause 26(1)(a)** has been paid, the certificate is, in the absence of evidence to the contrary, sufficient proof that the amount secured by the security interest has been repaid.
- (4) In this section, **registrar** means the Registrar-General of Land, a Registrar of Deeds, or any other person required under any legislation to keep any register.

Compare: 2023 No 35 s 328

35 Provisions applying where liabilities included in sale

- (1) If all or any part of a liability of a licensed insurer (**A**) is included in any sale, transfer, or other disposition under **clause 25**,—
 - (a) **A**, as from the date of the sale, transfer, or other disposition, is relieved from all its obligations in respect of the liability, or part of it; and
 - (b) the person entitled to performance in respect of the liability may enforce performance of the liability or part of it against the person to whom the sale, transfer, or other disposition is made in the same manner and to the same extent as the person was entitled to enforce performance against **A**; and
 - (c) the inclusion of part of a liability does not relieve **A** from any obligation in respect of any part of the liability not included in the sale, transfer, or other disposition.
- (2) If all or any part of a liability of a body corporate formed and registered under **clause 20**, or all or any part of a liability relating to the business carried on by an overseas person, is included in the sale, transfer, or other disposition, **sub-clause (1)(a)** does not relieve any overseas person from any obligation in respect of that liability.

Compare: 2023 No 35 s 329

*Bank may suspend payment of money owing***36 Bank may suspend payment of money owing**

- (1) The Bank may, in respect of a licensed insurer in resolution,—
 - (a) suspend in whole or in part the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person; and
 - (b) cancel the obligation to provide funding to any person.
- (2) This clause applies despite the terms of any agreement.
- (3) A suspension or cancellation does not constitute a breach or repudiation of any agreement entered into by the insurer with any person.
- (4) This clause is subject to **clauses 37 and 38** and section 421(1) to (3) of the Deposit Takers Act 2023.

Compare: 2023 No 35 s 330

37 Bank may not suspend or cancel obligation incurred after insurer enters resolution

Clause 36 does not authorise the Bank to suspend the repayment of a deposit, or the payment of a debt, or the discharge of an obligation, or to cancel an obligation to provide funding, if the obligation to repay the deposit, or to pay the debt, or the obligation, is incurred by the licensed insurer after it enters resolution.

Compare: 2023 No 35 s 331

38 Bank may not suspend payment of amount included in netted balance

- (1) **Clause 36** does not authorise the Bank to suspend the payment of an amount that would be included in the calculation of a netted balance in accordance with—
 - (a) section 310C of the Companies Act 1993; or
 - (b) section 257 of the Insolvency Act 2006; or
 - (c) a designated FMI's rules.
- (2) However, **clause 36** applies to the payment of the netted balance.

Compare: 2023 No 35 s 332

*Relationship between resolution and other legislation and processes***39 Application of certain provisions of Companies Act 1993**

- (1) Sections 275, 291A to 301, 310G, and 310I of the Companies Act 1993 apply to a licensed insurer (A) in resolution in all respects, and with all necessary modifications, as if—
 - (a) A were a company in liquidation under that Act; and
 - (b) the resolution manager were A's liquidator; and

- (c) the time at which A entered resolution were the time at which the liquidation commenced.
- (2) Despite **subclause (1)**, the following do not apply in relation to A:
- (a) sections 120, 207P to 209C, and 214 of the Companies Act 1993:
- (b) sections 129 and 291A to 296D of the Companies Act 1993, to the extent that those sections would otherwise apply to a transaction or disposition under an agreement entered into after the licensed insurer enters into resolution.
- (3) 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 **clause 51(1)**.

Compare: 2023 No 35 s 335

40 Application of other Acts

- (1) The following do not apply in relation to a licensed insurer in resolution:
- (a) the Receiverships Act 1993:
- (b) sections 76 and 91 to 106 of the Building Societies Act 1965.
- (2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with the recommendation of the Bank, declare that the provisions of any Act that correspond with the provisions referred to in **clause 39(2) or subclause (1)** do not apply (at all or to a specified extent) to a licensed insurer in resolution.
- (3) An Order in Council made under **subclause (2)** is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2023 No 35 s 336

41 Bank, resolution manager, and other persons are not directors under any legislation

For the purposes of this Act, any other legislation, or any other rule of law, the Bank, the resolution manager, or any other person must not be treated as being a director of a licensed insurer by reason only of the fact that the Bank, resolution manager, or other person is performing or exercising any functions, powers, or duties under Part 4 of this Act or this schedule.

Compare: 2023 No 35 s 337

42 Prior insolvency process must cease

- (1) If a licensed insurer (A) enters resolution and A is already being wound up or is already in liquidation, receivership, or voluntary administration,—
- (a) the winding up, liquidation, receivership, or voluntary administration must cease for so long as A continues to be in resolution; and

- (b) the person appointed as liquidator, receiver, or administrator is discharged.
 - (2) If an Order in Council made under **section 176** ends the resolution, the winding up, liquidation, receivership, or voluntary administration of A revives as if it had not ceased by reason of this clause unless the order provides otherwise.
 - (3) **Subclause (2)** applies subject to the terms and conditions specified in the order.
 - (4) If the winding up, liquidation, receivership, or voluntary administration revives, the person specified in the order as such becomes, or resumes as, the liquidator, receiver, or administrator of A for the time being.
- Compare: 2023 No 35 s 338

43 Continuation of resolution if restored

- (1) This clause applies if a licensed insurer (A)—
 - (a) has been removed from the New Zealand register under section 317 of the Companies Act 1993 while in resolution; but
 - (b) is restored to the New Zealand register under section 328 of the Companies Act 1993.
- (2) A continues to be in resolution from the time A is restored.
- (3) However, **subclause (2)** does not apply if, before A is restored, the Bank publishes a notice in the *Gazette* that states that **subclause (2)** will not apply to A.

Compare: 2023 No 35 s 339

Auditors and actuaries

44 Appointment of auditors and actuaries

- (1) The Bank must appoint 1 or more persons (whether as individuals or as the members of a firm) to be the auditor of a licensed insurer in resolution.
- (2) The person or persons that are appointed must be licensed auditors (within the meaning of section 6(1) of the Auditor Regulation Act 2011).
- (3) The Bank must appoint a person to be the appointed actuary of the insurer.
- (4) Each appointment must be for a term of up to 2 years, but a person appointed as auditor or actuary continues in office until a successor comes into office.
- (5) A person appointed as auditor or actuary is eligible for reappointment.

Compare: 2023 No 35 s 340

45 Existing auditor or actuary ceases to hold office

A person holding office as auditor or appointed actuary of a licensed insurer at the time that it enters resolution ceases to hold that office but may be appointed under **clause 44**.

Compare: 2023 No 35 s 341

46 Bank may remove auditor or actuary from office

- (1) The Bank may, at any time for just cause, remove an auditor or actuary from office.
- (2) In this section, **just cause** means any of the following proved to the satisfaction of the Bank:
 - (a) inability to perform the functions of the office:
 - (b) bankruptcy:
 - (c) neglect of duty:
 - (d) misconduct.
- (3) The removal must be made by written notice to the auditor or actuary.
- (4) The notice must—
 - (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is given; and
 - (b) be published in the *Gazette*.

Compare: 2023 No 35 s 342

47 Auditor's or actuary's fees

An auditor or actuary must be paid the fees that are fixed by the Bank.

Compare: 2023 No 35 s 343

48 Auditor's or actuary's rights

- (1) An auditor or actuary has a right of access at all times to the information of the licensed insurer.
- (2) The auditor or actuary is entitled to require from the licensed insurer's directors and employees the information and explanations that the auditor or actuary thinks necessary for the performance of the auditor's or actuary's duties.

Compare: 2023 No 35 s 344

*Offences***49 Offence to remove property**

- (1) A person must not, without the resolution manager's consent, transfer or remove from New Zealand any property of a licensed insurer that is in resolution.
- (2) A person commits an offence if the person—

- (a) contravenes **subclause (1)**; and
 - (b) knows that, or is reckless as to whether, it must obtain the resolution manager's consent.
- (3) A person that commits an offence against this section is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 9 months or to a fine not exceeding \$200,000 (or both):
 - (b) in any other case, to a fine not exceeding \$1,500,000.
- (4) This clause does not prevent a court from issuing an injunction or making any order to prevent any property from being removed from New Zealand.
- (5) **Subclause (1)** is subject to section 421(1) to (3) of the Deposit Takers Act 2023.

Compare: 2023 No 35 s 345

50 Offence to destroy, alter, or conceal records

- (1) A person commits an offence against this Act if,—
- (a) with intent to defeat the purposes of Part 4 of this Act or this schedule, they destroy, alter, or conceal any information of, or relating to, a licensed insurer in resolution; or
 - (b) without reasonable excuse, they fail or refuse to answer, to the best of their knowledge and ability, any question that they are asked by or on behalf of the Bank or the resolution manager in relation to any such information or any property; or
 - (c) they wilfully give a false or misleading answer to that question.
- (2) A person who commits an offence under **subclause (1)** is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 9 months or to a fine not exceeding \$100,000 (or both):
 - (b) in any other case, to a fine not exceeding \$1,500,000.
- (3) If, in any prosecution for an offence under this clause, it is proved that the person charged with the offence destroyed, altered, or concealed any information of the kind referred to in **subclause (1)**, it must be presumed, in the absence of evidence to the contrary, that the person did so with intent to defeat the purposes of Part 4 of this Act or this schedule.

Compare: 2023 No 35 s 346

Expenses

51 Expenses of resolution

- (1) All costs, charges, and expenses properly incurred by the Bank or the resolution manager in the performance or exercise of the Bank's or the resolution manager's functions, duties, and powers under **subparts 5 to 8 of Part 4** of

this Act and this schedule are payable out of the property of any 1 or more of the following in priority to all other claims:

- (a) the licensed insurer;
 - (b) a subsidiary or other associated person that is in resolution;
 - (c) a body corporate formed and registered under **clause 20 or 26**.
- (2) The Bank or the resolution manager (as the case may be) may apportion the costs, charges, and expenses between those persons in the manner that the Bank or the resolution manager thinks fit.

Compare: 2023 No 35 s 347

52 Advances to resolution managers

- (1) There may be advanced, out of money in a Crown Bank Account appropriated by Parliament for the purpose, to a resolution manager, the amounts that the Minister may approve in respect of costs, charges, and expenses (including their remuneration) incurred in the performance or exercise of the resolution manager's functions, duties, and powers under **subparts 5 to 8 of Part 4** of this Act and this schedule.
- (2) An advance may be made only with the consent of the Minister of Finance.
- (3) All money advanced to a resolution manager must be refunded to the Crown out of money payable to that person, and the Crown has all the rights of the person to whom the advance was made to receive and recover any such money.
- (4) All money refunded to the Crown must be credited upon receipt to a Crown Bank Account.

Compare: 1989 No 11 s 66

Subsidiaries

53 Rules relating to subsidiaries do not apply

- (1) Nothing in subpart 8 of Part 2 of the Reserve Bank of New Zealand Act 2021 (subsidiaries) applies to anything the Bank does in the performance or exercise of its functions, powers, or duties under Part 4 of this Act or this schedule.
- (2) No body corporate formed and registered in accordance with this schedule is a subsidiary of the Bank under the Reserve Bank of New Zealand Act 2021.

Compare: 2023 No 35 s 348

Value of contracts of insurance

54 Bank may value contracts of insurance

- (1) The Bank may determine the amount of the liability of a licensed 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 Bank decides.

- (2) The Bank must give to each policyholder notice in writing of the amount of the liability of the insurer under the policyholder's contract of insurance as determined under **subclause (1)**.
- (3) The amount of the liability of the licensed insurer, as determined by the Bank, is binding upon each policyholder to whom notice is given under **subclause (2)**.

55 Value of contracts of insurance may be reduced by Order in Council

- (1) This clause applies to a licensed insurer that is in resolution.
- (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.
- (4) An order made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Part 3

Appointment of resolution manager

56 Bank may appoint resolution manager

- (1) The Bank may appoint 1 or more persons as resolution managers.
- (2) The Bank makes an appointment by—
 - (a) giving notice of the appointment to the person who is appointed; and
 - (b) publishing the notice in the *Gazette*.
- (3) The notice must state the date on which, and time at which, the appointment takes effect.
- (4) A resolution manager must be an employee of the Bank or any other person that the Bank is satisfied is suitably qualified.
- (5) Nothing in this schedule prevents the Bank from appointing a person as resolution manager to replace another resolution manager whose term of appointment has expired or who has had their appointment terminated, has resigned, or has died.

Compare: 2023 No 35 s 357

57 Bank may appoint itself as resolution manager

The Bank may appoint itself as the resolution manager (or one of the resolution managers) under **clause 56**.

Compare: 2023 No 35 s 358

58 Bank holds office as resolution manager if no other person holds office

- (1) If a licensed insurer (A) is in resolution but no other person holds office as resolution manager in respect of A, the Bank holds office as the resolution manager.
- (2) This clause does not limit the Bank's powers under **clause 56**.
Compare: 2023 No 35 s 359

59 How Part 4 of Act and schedule applies if Bank holds office as resolution manager

- (1) If the Bank holds office as resolution manager,—
 - (a) the duty for the resolution manager to report to, obtain the consent of, or consult the Bank does not apply; and
 - (b) the duty on the Bank (as resolution authority) to supervise the resolution manager does not apply; and
 - (c) Part 4 of this Act and this schedule applies with all other necessary modifications.
- (2) If another person also holds office as resolution manager, the duties referred to in **subclause (1)(a) and (b)** continue to apply in relation to that person.
Compare: 2023 No 35 s 360

60 How 2 or more resolution managers may act

- (1) If 2 or more persons hold office as resolution manager, a notice under **clause 56** must state whether the functions, powers, or duties of the resolution manager must be performed or exercised by those persons acting together or may be performed or exercised individually.
- (2) This clause applies whether or not the functions, powers, or duties are performed or exercised under a delegation under section 74 of the Reserve Bank of New Zealand Act 2021.
Compare: 2023 No 35 s 361

61 Bank may terminate appointment of resolution manager

- (1) The Bank may, at any time and for any reason, terminate the appointment of a resolution manager.
- (2) The termination must be made by written notice to the resolution manager.
- (3) The notice must—
 - (a) state the date on which the termination takes effect, which must not be earlier than the date on which the notice is given; and
 - (b) be published in the *Gazette*.
- (4) If the person holds office as resolution manager for 2 or more persons, the Bank may terminate the appointment in respect of all or any of those persons.
Compare: 2023 No 35 s 362

62 Resolution manager may resign

A resolution manager may resign office by notice in writing to the Bank.

Compare: 2023 No 35 s 363

63 Bank may appoint replacement

If the appointment of a resolution manager is terminated under **clause 61** or a resolution manager resigns office or dies, the Bank may, under **clause 56**, appoint a person to replace that resolution manager.

Compare: 2023 No 35 s 364

64 Resolution manager continues in office

- (1) A resolution manager (**A**) continues in office until a successor is appointed despite—
- (a) their resignation; or
 - (b) the expiry of their period of appointment.
- (2) **Subclause (1)** does not apply if the Bank informs A by written notice that no successor is to be appointed at that time.

Compare: 2023 No 35 s 365

65 Licensed insurer continues to be in resolution

A licensed insurer continues to be in resolution even though the term of office of a resolution manager who is acting in relation to the resolution has expired or the resolution manager has—

- (a) had their appointment terminated; or
- (b) resigned from office; or
- (c) died; or
- (d) ceased to hold office because of the expiry of their period of appointment; or
- (e) otherwise ceased to hold office.

Compare: 2023 No 35 s 366

Schedule 3

Consequential amendments

s 78

Companies Act 1993 (1993 No 105)

In section 223(da), replace “section 44” with “**subpart 1A of Part 2**”.

In section 236(2A), replace “section 44” with “**subpart 1A of Part 2**”.

Contracts of Insurance Act 2024 (2024 No 46)

Replace section 6(1) with:

- (1) For the purposes of this Act, unless the context otherwise requires, **contract of insurance**—
 - (a) means a contract involving the transference of risk and under which a person (the insurer) agrees, in return for a premium, to pay to or for the account of another person (the policyholder) a sum of money or its equivalent, whether by way of indemnity or otherwise, on the happening of 1 or more uncertain events; and
 - (b) includes a contract of a class, or a transaction of a class, that is declared by regulations made under the Insurance (Prudential Supervision) Act 2010 to be a contract of insurance for the purposes of that Act unless regulations made under this Act provide that the declaration does not apply for the purposes of this Act.

Deposit Takers Act 2023 (2023 No 35)

After section 421(1)(a), insert:

- (aa) **sections 178, 179, and 186 and clauses 36 and 49 of Schedule 2** of the Insurance (Prudential Supervision) Act 2010:

In section 421(4)(a), replace “section 170(1)(b)” with “**section 170(b)**”.

In section 421(4)(c), replace “section 170(2)” with “**section 171**”.

Fair Trading Act 1986 (1986 No 121)

In section 26D(4)(d)(i), replace “(within the meaning of section 7 of the Insurance (Prudential Supervision) Act 2010)” with “(as defined in section 46KA(4))”.

Replace section 46KA(1) with:

- (1) This section applies to contracts of insurance.

In section 46KA(4), insert in its appropriate alphabetical order:

- contract of insurance**—
- (a) has the same meaning as in section 7 of the Insurance (Prudential Supervision) Act 2010 (subject to **paragraph (b)**); and

Fair Trading Act 1986 (1986 No 121)—continued

- (b) includes a contract of a class, or a transaction of a class, that is declared by regulations made under that Act to be a contract of insurance for the purposes of that Act unless regulations made under this Act provide that the declaration does not apply for the purposes of this Act

Financial Markets Conduct Act 2013 (2013 No 69)

In section 6(1), replace the definition of

contract of insurance—

- (a) has the same meaning as in section 7 of the Insurance (Prudential Supervision) Act 2010 (subject to **paragraphs (b) and (c)**); and
- (b) includes a contract of a class, or a transaction of a class, that is declared by regulations made under that Act to be a contract of insurance for the purposes of that Act unless regulations made under this Act provide that the declaration does not apply for the purposes of this Act; but
- (c) in subparts 6A and 6B of Part 6, does not include a contract of reinsurance within the meaning of the Insurance (Prudential Supervision) Act 2010

Financial Market Infrastructures Act 2021 (2021 No 13)

In section 5, definition of **insolvency manager**, repeal paragraph (c)(iii).

In section 5, definition of **insolvency manager**, before paragraph (d), insert:

- (cb) the Bank, when it is performing or exercising functions under **subparts 4 to 8 of Part 4** and **Schedule 2** of the Insurance (Prudential Supervision) Act 2010:

After section 59(1)(a), insert:

- (aa) **clauses 7(3) and 38 of Schedule 2** of the Insurance (Prudential Supervision) Act 2010:

Income Tax Act 2007 (2007 No 97)

In section GC 18(10)(c), after “condition of licence”, insert “, or under a solvency standard,”.

Insolvency (Cross-border) Act 2006 (2006 No 57)

In Schedule 1, replace article 2(h)(i) with:

- (i) the Bank acting as a resolution authority under **subparts 4 to 8 of Part 4** and **Schedule 2** of the Insurance (Prudential Supervision) Act 2010; or
- (ia) a resolution manager appointed under **Part 3 of Schedule 2** of the Insurance (Prudential Supervision) Act 2010; or

In Schedule 1, article 2(i), after “statutory management,”, insert “resolution,”.

Reserve Bank of New Zealand Act 2021 (2021 No 31)

In section 49(2), definition of **standards**, replace paragraphs (a) and (b) with:

- (a) standards issued under **section 55** of the Insurance (Prudential Supervision) Act 2010:

Summary Proceedings Act 1957 (1957 No 87)

In section 2(1), definition of **infringement notice**, after paragraph (g), insert:

- (gaa) **section 137V** of the Insurance (Prudential Supervision) Act 2010; or