



2010/02

INSURANCE CODE 2010

Sir F. Goodwin, K.B.E.

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga this 5th day of March 2010

Present:

HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE IN EXECUTIVE COUNCIL

PURSUANT to Section 96 of the Insurance Act 2008, His Excellency the Queen's Representative, acting by and with the advice and consent of the Executive Council, hereby makes the following Code:

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CODE

PART I **PRELIMINARY**

1. Title and commencement – This Code may be cited as the Insurance Code 2010 and comes into operation on the date of assent by the Queen's Representative.
2. Application of Code – (1) Subject to subparagraph (2), this Code applies, to the extent specified, to:

- (a) licensed insurers;
 - (b) licensed insurance managers; and
 - (c) licensed insurance intermediaries.
- (2) The provisions of this Code specified in Schedule 2 are disapplied or modified to the extent specified in the Schedule with respect to –
 - (a) an insurer holding a category B insurance licence; and
 - (b) an approved external insurer.
- (3) The Provisions of Parts 4 and 5 of this Code specified in Schedule 3 are disapplied or modified with respect to a licensed external insurance intermediary to the extent specified in the Schedule.

3. Definitions – (1) Unless the context otherwise requires, for the purposes of this Code –

“Act” means the Insurance Act 2008;

“admissible asset” means an asset specified in Schedule 1 as an admissible asset;

“board”, in relation to a company, means –

- (a) the board of directors, committee of management, council or other governing authority of the company; or
- (b) if the company has only one director, that director;

“calendar quarter” has the meaning specified in subparagraph (2);

“capital resources”, in relation to a licensed insurer, means the aggregate of the insurer’s admissible assets;

“connected person” has the meaning specified in paragraph 5;

“Cook Islands office” means –

- (a) in the case of a licensed insurer that has a category A licence, its principal office in the Cook Islands as notified to the Commission;
- (b) in the case of a licensed insurer that has a category B licence, the office of its representative in the Cook Islands;
- (c) in the case of licensed insurer that has a category C licence, the office of its insurance manager in the Cook Islands;

“dollar” or “\$”, unless expressly provided otherwise, means the New Zealand dollar;

“financial year” has the meaning specified in paragraph 45;

“group”, in relation to a company, means a group of companies of which the company is a member within the meaning of paragraph 4(3);

“holding company” has the meaning specified in paragraph 4(2);

“Insurance Regulations” means the Insurance Regulations 2009;

“key functionary” has the meaning specified in paragraph 6;

“licensed external insurance intermediary” means an external insurance intermediary who holds an insurance intermediary’s licence;

“licensed insurer” includes an approved external insurer, and “licensee” shall be construed accordingly;

“licensee” means a person who holds –

- (a) an insurer’s licence;
- (b) an insurance intermediary’s licence; or
- (c) an insurance manager’s licence;

“outsourcing” means an arrangement between a licensee and a service provider whereby the service provider, or another person acting for the service provider, undertakes an activity on a continuing basis that would normally be undertaken by the licensee, and “outsource” shall be construed accordingly;

“representative” means the person appointed under paragraph 8 of Schedule 2 as the representative of an insurer holding a category B licence;

“senior management”, when used with respect to a licensee, means the senior managers of the licensee collectively or where the context requires, those senior managers having responsibility for particular senior manager functions and, in the case of a licensed insurer required to appoint a licensed insurance manager, includes the licensed insurance manager appointed;

“senior manager”, in relation to a licensee, means an individual employed under a contract of employment who –

- (a) acts as chief executive officer, or the equivalent under a different name;
- (b) holds any position in which he is answerable directly to the board or the Chief Executive; or
- (c) has responsibility for either or both of the following functions:

- (i) compliance, including anti-money laundering compliance;
- (ii) internal audit;

“service provider”, in relation to an outsourcing arrangement, means any person other than –

- (a) a director of the licensee acting in his capacity as a director; or
- (b) an employee of the licensee acting in his capacity as an employee;

“solvency margin” has the meaning specified in paragraph 13;

“subsidiary” has the meaning specified in paragraph 4(1);

“technical provisions”, in relation to an insurer, means the amount provided for in the insurer’s balance sheet to meet liabilities arising out of insurance contracts that it has entered into.

(2) For the purposes of this Code, a year is divided into the following four calendar quarters –

- (a) 1 January to 31 March;
- (b) 1 April to 30 June;
- (c) 1 July to 30 September; and
- (d) 1 October to 31 December.

(3) Except as provided in subparagraph (1), any word or term that is defined in the Act or the Regulations has the same meaning in this Code.

4. Meaning of “subsidiary”, “holding company” and “group” – (1) A company (the “first company”) is a subsidiary of another company (the “second company”), if —

- (a) the second company is –
 - (i) a member of the first company and whether alone, or pursuant to an agreement with other members, controls a majority of the voting rights in the first company;
 - (ii) a member of the first company and has the right to appoint or remove a majority of the board of the first company; or
 - (iii) the holding company of another company which is a holding company of the first company; or
- (b) the first company is a subsidiary of a company which is itself a subsidiary of the second company.

(2) A company is the holding company of another company if that other company is its subsidiary.

(3) “Group” in relation to a company (the “first company”), means that company and any other company that is –

- (a) a holding company of the first company;

- (b) a subsidiary of the first company;
- (c) a subsidiary of a holding company of the first company;
- (d) a holding company of a subsidiary of the first company;
- (e) a company in which the first company, or a company specified in subparagraph (a), (b), (c) or (d) has a significant interest.

5. Meaning of "connected person" – (1) A person (the "first person") is connected with another person (the "second person") if the first person –

- (a) being an individual, is a relative of the second person;
- (b) is a partner of a partnership of which the second person is a partner;
- (c) is a company of which the second person is a director or employee;
- (d) is a company that is the holding company or a subsidiary of the second person;
- (e) is a director or employee of the holding company, or a subsidiary, of the second person;
- (f) has a significant interest in the second person;

(2) For the purposes of subparagraph (1), an individual's relatives are his spouse, parents, siblings, children (including stepchildren) and their descendants.

6. Meaning of "key functionary" – For the purposes of the Act and this Code, the following are key functionaries of a licensee –

- (a) a senior manager of the licensee;
- (b) an insurance manager, in the case of a licensed insurer required to appoint an insurance manager;
- (c) an auditor, in the case of a licensee required to appoint an auditor;
- (d) an actuary, in the case of a licensed insurer required to appoint an actuary.

7. Persons qualified to act as auditor – (1) An individual is qualified to act as the auditor of a licensee if the individual –

- (a) is a member of a professional body specified in subparagraph (2);
- (b) is qualified or entitled by the professional body of which he is a member to undertake audits; and
- (c) in the case of a licensed insurer, is not its actuary.

(2) The following professional bodies are specified for the purposes of this paragraph –

- (a) New Zealand Institute of Chartered Accountants;
- (b) Institute of Chartered Accountants in Australia;
- (c) CPA Australia;
- (d) Institute of Chartered Accountants in England and Wales;
- (d) Institute of Chartered Accountants of Scotland;
- (e) American Institute of Certified Public Accountants; and
- (h) such other professional body as may be recognised by the Commission for the purposes of this paragraph on a case by case basis.

(3) A partnership is qualified to act as the auditor of a licensee if a majority of the partners are individuals qualified to act as the auditor of a licensee under subparagraph (1).

(4) A body corporate is qualified to act as the auditor of a licensee if the body corporate is controlled by individuals qualified to act as the auditor of a licensee or partnerships qualified to act as the auditor of a licensee under subparagraph (3).

8. Persons qualified to act as actuary - (1) A person is qualified to act as the actuary of a licensed insurer if he is a member of a professional body specified in paragraph (2).

(2) The following professional bodies are specified for the purposes of paragraph (1) -

- (a) New Zealand Society of Actuaries;
- (b) Institute of Actuaries of Australia;
- (c) Institute of Actuaries in England and Wales;
- (d) Faculty of Actuaries in Scotland;
- (e) Society of Actuaries (United States);
- (f) Casualty Actuarial Society (United States);
- (g) such other professional body as may be recognised by the Commission for the purposes of this paragraph on a case by case basis.

PART 2

PRINCIPLES FOR BUSINESS

9. Principles for business – A licensee shall conduct its business in accordance with the following seven principles for business –

- (a) A licensee shall conduct its business with integrity.
- (b) A licensee shall have due regard for the interests of its customers and shall protect its customers assets when it has custody of them and shall manage conflicts of interest fairly.
- (c) A licensee shall take reasonable care to organise and control its business and affairs effectively and have adequate risk management systems in place.
- (d) A licensee shall maintain adequate financial resources, including capital and capital resources as appropriate, taking into account the nature, size, complexity and diversity of its business and the risks that it faces.
- (e) A licensee shall be transparent in its business arrangements.
- (f) A licensee shall deal with the Commission in an open and co-operative manner.
- (g) A licensee shall not make statements that are misleading, false or deceptive.

PART 3

PROVISIONS APPLICABLE TO LICENSED INSURERS

Financial Resource Requirements

10. Application of financial resource requirements – Paragraphs 11 to 19 apply to a licensed insurer that holds a category A or a category C licence and a reference in those paragraphs to a “licensed insurer” is a reference to a licensed insurer that holds a category A or a category C licence.

11. Licensed insurer to maintain adequate capital resources - (1) A licensed insurer shall —

- (a) ensure that, at all times, it maintains its capital resources at a level that is adequate to support its insurance business, taking into account the nature, size, complexity and diversity of its business and its risk profile; and
- (b) maintain adequate systems and controls to monitor and assess the adequacy of its capital resources on an ongoing basis.

(2) The board and senior management of a licensed insurer shall make their own determination of the capital resources that are reasonably required to support the insurer’s business, taking into account the matters specified in subparagraph (1)(a), and shall ensure that the insurer’s capital resources are increased where appropriate.

(3) On at least an annual basis —

- (a) the senior management of a licensed insurer shall report to the board on the scope and performance of the systems and controls established to monitor and assess the insurer’s solvency margin and its capital resource requirements; and
- (b) the board shall review those systems and controls taking into consideration the report by senior management.

12. Minimum capital requirement and minimum shareholders’ funds – (1) The prescribed minimum capital requirement for a licensed insurer is —

- (a) in the case of an insurer holding a category A licence, \$200,000; and
- (b) in the case of an insurer holding a category C licence, \$100,000;

or an equivalent sum in any currency that is acceptable to the Commission.

(2) A licensed insurer shall maintain minimum shareholders’ funds of at least 75% of the minimum capital requirement applicable to the insurer as specified in subparagraph (1).

13. Solvency margin - (1) For the purposes of section 18 of the Act and this Code, the solvency margin of a licensed insurer is the amount by which the value of the assets of the insurer exceeds the value of its liabilities.

(2) In calculating the solvency margin of a licensed insurer -

- (a) only those assets specified in Schedule 1 as “admissible assets” may be taken into account in determining the value of its assets to the extent specified in the Schedule;
- (b) the insurer’s liabilities must be valued in accordance with paragraph 15; and
- (c) the insurer’s assets must be valued in accordance with paragraph 14.

(3) Unless, in accordance with the Act, the Commission otherwise directs, the solvency margin to be maintained by a licensed insurer is –

- (a) in the case of a general insurer holding a category A licence, the higher of –
 - (i) its capital requirement; or
 - (ii) an amount equal to the sum of 5% of its unearned premium reserve and 10% of its outstanding claims reserve;
- (b) in the case of a long-term insurer holding a category A license, the higher of –
 - (i) its capital requirement; or
 - (ii) an amount equal to 5% of its net liabilities under its long-term policies; and
- (c) in the case of an insurer holding a category C licence, its capital requirement.

(4) A licensed insurer shall maintain adequate systems and controls to monitor, assess and document its compliance with this paragraph on an ongoing basis.

(5) For the purposes of this paragraph, the capital requirement of a licensed insurer is the capital that it is required to maintain under paragraph 12 (1).

14. Valuation of assets – Subject to subparagraph (2), a licensed insurer shall ensure that the value of its assets is determined on the basis required by the accounting standards in accordance with which the insurer's financial statements are prepared.

(2) Under no circumstances shall any asset of a licensed insurer be valued in an amount higher than the market value of that asset.

15. Liabilities and technical provisions - (1) A licensed insurer shall ensure that its liabilities are –

- (a) calculated and valued on the basis required by the accounting standards in accordance with which the insurer's financial statements are prepared and include all contingent and prospective liabilities; and
- (b) are monitored and calculated on a continuous basis.

(3) A licensed insurer shall establish technical provisions for each class of insurance business that –

- (a) in the case of a general insurer include –
 - (i) provision for unearned premiums;
 - (ii) provision for outstanding claims, including reported claims and claims that are incurred but not reported; and
 - (iii) provision for unexpired risks; and
 - (b) in the case of a long term insurer make full provision for policyholder benefits.
- (4) For the purposes of subparagraph (3)(a) –
- (a) an insurer's unearned premiums shall be estimated using –
 - (i) the 24ths method;
 - (ii) the 365ths method; or
 - (iii) such other method as may be approved by the Commission; and

- (b) the provision for outstanding claims must be estimated not less than once every three months as at the last day of the third month.

(5) For the purposes of subparagraph (3)(b), the provision for policyholder benefits must be estimated not less than once each financial year as at the end of the financial year and, where an insurer is required to appoint an actuary, the provision for policyholder benefits shall be approved by that actuary

(6) The technical provisions established by a licensed insurer shall be monitored on a continuous basis.

16. Investment strategy, policies, systems and controls – (1) A licensed insurer shall establish and maintain –

- (a) an investment strategy and such investment policies as the board considers appropriate for the nature, size, complexity and diversity of the insurer's business; and
- (b) systems and controls that are sufficient to ensure that the investment strategy and policies are effectively implemented.

(2) Without limiting subparagraph (1), the investment strategy and policies of a licensed insurer shall address –

- (a) the risk profile of the insurer;
- (b) the mixture and diversification of investment by type, including the long-term asset mix over the main investment categories;
- (c) the establishment of limits for the allocation of assets by geographical area, markets, sectors, counterparties and currency;
- (d) the extent to which the holding of some types of assets is restricted or disallowed, for example illiquid or volatile assets;
- (e) the conditions under which the insurer can pledge or lend assets;
- (f) the safekeeping of assets;
- (g) the appropriate matching of assets and liabilities; and
- (h) clear accountability for all asset transactions and associated risks.

17. Responsibilities of board for investment strategy and policies – The board of a licensed insurer shall –

- (a) approve the investment strategy and the significant investment policies, and any subsequent changes to the strategy or significant policies, and review them on at least an annual basis; and
- (b) ensure that a management structure, including appropriate systems and controls, is put in place to effectively execute and monitor the investment strategy and policies.

18. Investment risk management – (1) The risk management strategy, policies, systems and controls established and maintained by a licensed insurer in accordance with paragraph 27 shall cover the risks associated with investment activities that may affect the insurer's liabilities or solvency margin.

(2) The internal controls established and maintained by a licensed insurer shall cover the insurer's investment strategy and policies and shall ensure that the investment strategy, policies, systems and controls are properly documented and subject to adequate oversight.

- (3) The board of a licensed insurer shall ensure that –
 - (a) effective policies, systems and controls are established and maintained to enable the monitoring and managing of the insurer's asset/liability position to ensure that the insurer's investment activities and assets positions are appropriate for its risk profile; and
 - (b) contingency plans are put in place to mitigate the effect of a deterioration in investments.

19. Reinsurance - (1) A licensed insurer shall have a written reinsurance strategy, approved by its directors, that is appropriate to the insurer's overall risk profile and its capital resources.

(2) The directors of a licensed insurer shall review the reinsurance strategy at least annually and at any time when there have been material changes in the insurer's circumstances or in other matters relevant to the reinsurance strategy.

(3) A licensed insurer holding a category A licence shall submit to the Commission a summary of its intended reinsurance program for each year on or before 1st November of the previous year.

Corporate Governance

20. Corporate governance framework – (1) A licensed insurer shall –

- (a) take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors and its senior managers and other key functionaries so that –
 - (i) it is clear who has which of those responsibilities; and
 - (ii) the business and affairs of the insurer can be adequately monitored and controlled by the directors and its senior management;
- (b) establish and maintain such systems and controls as are appropriate for the nature, size, complexity and diversity of the insurer's business and the risks to which it is exposed;
- (c) ensure that its systems and controls are regularly reviewed and updated as required;
- (d) ensure that it has a span of control that is adequate for the nature, size, complexity and diversity of its business.

(2) Where a licensed insurer carries on business through one or more branches or subsidiaries incorporated outside the Cook Islands, an appropriate and effective corporate governance framework must be established, maintained and implemented in each branch and subsidiary.

21. Directors and board of a licensed insurer - (1) A licensed insurer shall have an adequate number of directors who –

- (a) are capable of exercising independent judgment;
- (b) have sufficient knowledge, skills, experience and understanding of the business of the insurer, and the risks to which the insurer is exposed, to ensure that the board is able to fulfil its responsibilities; and

- (c) have sufficient time and commitment to undertake their duties diligently.
- (2) Without limiting subparagraph (1), a licensed insurer shall, at all times, have –
 - (a) in the case of an insurer holding a category A licence, at least three directors; or
 - (b) in the case of an insurer holding a category C licence, at least two directors.
- (3) The board of a licensed insurer has ultimate responsibility for the business and affairs of the insurer and for ensuring its effective organization, including responsibility for –
 - (a) ensuring that a corporate governance framework complying with this Code is established and maintained by the insurer;
 - (b) ensuring that it has effective oversight of the management of the insurer, including approving, periodically reviewing and overseeing –
 - (i) the insurer's overall business strategy;
 - (ii) the insurer's risk management strategy required by this Code; and
 - (iii) such other strategies as are required by the Code or that the board considers to be necessary or appropriate;
 - (c) approving and periodically reviewing the significant policies of, the insurer;
 - (d) ensuring that –
 - (i) the insurer has adequate, and sufficiently qualified and experienced, senior managers and other employees;
 - (ii) appropriate and effective systems and controls are established, maintained and implemented for giving effect to the strategies and policies of the insurer, which shall include internal controls and systems and controls with respect to risk management; and
 - (iii) the insurer complies with its obligations under the Act, this Code, the Financial Supervisory Commission Act 2003 and the Financial Transactions Reporting Act, 2004;
 - (e) establishing such standards of conduct for business conduct as are appropriate;
 - (f) monitoring and ensuring the financial soundness of the insurer; and
 - (g) such other matters as may be specified in this Code.
- (4) Subject to the strategy and policies established by the board, the senior management of a licensed insurer is responsible for –
 - (a) overseeing the operations of the licensed insurer and providing direction to it on a day-to-day basis;
 - (b) providing the board with recommendations for its review and approval on the licensed insurer's strategy, business plans and significant policies;

- (c) providing the board with timely and accurate information, including financial information, that is adequate to enable the board fulfil its responsibilities, including holding senior management to account.

22. Internal controls – (1) A licensed insurer shall establish and maintain an adequate and effective system of internal controls appropriate for the nature, size, complexity and diversity of its business and the risks to which the insurer is exposed.

(2) The internal controls established under subparagraph (1) shall, as appropriate, operate at all levels of the insurer and shall ensure that –

- (a) the business of the insurer is planned and conducted properly, adequately and in an orderly manner and in accordance with the strategies and policies established by the board and the policies established by senior management;
- (b) transactions and commitments are entered into in accordance with documented general or specific authorities and limits and that compliance with such authorities and limits is reviewed;
- (c) the assets of the insurer are appropriately safeguarded and the liabilities controlled through measures designed to minimise the risk of loss from irregularities, error, fraud and physical damage, and to identify such occurrences promptly should they occur;
- (d) there are appropriate arrangements in place for the delegation of authority and responsibility and for the segregation of duties;
- (e) the accounting and other records of the insurer are complete, accurate and timely and can be used to compile financial statements as required by the Act and this Code, management information, returns to the Commission and any reporting requirements under the Financial Supervisory Commission Act 2003 or the Financial Transactions Reporting Act 2004;
- (f) the board and senior management is able to assess and monitor the adequacy of the insurer's capital, capital resources and solvency margin, in relation to its business, including risk profiles and the quality of its assets;
- (g) the board and senior management is able to identify and regularly assess all relevant risks in the conduct of the insurer's business, so that –
 - (i) identified risks can be measured, monitored and controlled appropriately;
 - (ii) any losses can be monitored and controlled on a regular and timely basis; and
 - (iii) appropriate provisions can be made for bad and doubtful debts and for any other exposures, both on- and off-balance sheet;

- (h) the board and senior management is able to properly guard against involvement in financial crime and ensure that the licensed insurer is complying with all its obligations under the Act, this Code, the Financial Supervisory Commission Act 2003 and the Financial Transactions Reporting Act 2004 and any Prudential Statements issued under the Act;
- (i) relevant staff of the licensed insurer are able to perform sufficient due diligence on the insurer's customers and prospective customers to adequately assess all relevant risks, including the risks of money laundering and terrorist financing;
- (j) adequate business resumption, disaster recovery and other contingency arrangements are in place and tested at appropriate intervals; and
- (k) adequate controls are in place, including –
 - (i) to control changes to systems and records to ensure that only valid changes are made to them;
 - (ii) to control access to protect the confidentiality and integrity of electronic assets; and
 - (iii) to ensure that appropriate checks and balances, such as cross checking, reconciliations, dual control of assets, is undertaken.

(3) A licensed insurer shall ensure that its internal controls extend to any outsourced functions.

(4) Where a licensed insurer also operates through subsidiaries and branches, its internal control systems must extend to those operations and enable effective oversight by the insurer.

23. Information systems – (1) A licensed insurer shall have appropriate information systems in place that cover all the significant activities carried on by the insurer and, where appropriate, that enable the insurer to measure, assess and report on the size, composition and quality of its risks.

(2) The information systems of a licensed insurer shall be reliable and secure.

(3) A licensed insurer's information systems shall be monitored independently and supported by adequate contingency arrangements.

24. Monitoring of internal controls – (1) A licensed insurer shall ensure that –

- (a) the effectiveness of the internal control system is monitored on an on-going basis;
- (b) regular reports on the effectiveness of the internal control system are made to the board;
- (c) any deficiencies identified in the internal control system are corrected as soon as reasonably practicable.

(2) A licensed insurer's internal control policies shall require any deficiencies identified in the internal control system to be reported in a timely manner to senior management and for material internal control deficiencies identified to be reported to the board, notwithstanding that they may have been corrected.

25. Responsibilities of board and senior management – (1) The board of a licensed insurer has ultimate responsibility for ensuring that an adequate and effective system of internal controls is established and maintained by the licensed insurer.

(2) Without limiting subparagraph (1), the board of a licensed insurer shall –

- (a) approve and periodically review the overall business strategies and significant policies of the licensed insurer;
 - (b) where appropriate, set acceptable levels for the licensed insurer's significant risks;
 - (c) ensure that senior management implements the internal controls strategy and policies established by the board;
 - (d) approve an appropriate organisational structure for the licensed insurer;
 - (e) approve new products and major risk management initiatives;
 - (f) ensure that senior management is monitoring the effectiveness of the licensed insurer's internal control system;
 - (g) oversee the licensed insurer's market conduct activities.
- (3) The senior management of a licensed insurer has responsibility for –
- (a) implementing the strategy and policies of the board with respect to internal controls;
 - (b) ensuring that –
 - (i) the internal controls required by this Code are established and maintained;
 - (ii) the information systems required under paragraph 23 are put in place; and
 - (iii) the internal controls are monitored and deficiencies corrected as required by paragraph 24; and
 - (c) reviewing the licensed insurer's internal controls, at least annually, and reporting on the results of their review to the board.

26. Internal audit function – (1) A licensed insurer shall consider whether, given the nature, size, complexity and diversity of its business and the risks to which it is exposed, it is appropriate for an internal audit function to be established and, if so it shall establish one and subparagraphs (2), (3) and (4) shall apply to the insurer.

(2) The internal audit function of a licensed insurer shall –

- (a) possess sufficient independence to carry out the insurer's internal audit obligations objectively;
- (b) report directly to the board or, if the insurer has one, to the audit committee and be given sufficient status within the insurer to ensure that senior management and the board react to, and act on, its recommendations;
- (c) have unrestricted access to –
 - (i) the staff of the insurer, in order to carry out the licensed insurer's internal audit obligations; and
 - (ii) documents and information relating to the business of the insurer and its customers;
- (d) have sufficient human resources with adequate professional qualifications, relevant auditing experience and training to understand and evaluate the business being audited;

- (e) employ a methodology that identifies all significant risks run by the insurer and allocate resources accordingly.
 - (3) The internal audit function shall –
 - (a) extend to all the activities of the insurer, including outsourced activities, and where the insurer has established branches or subsidiaries, to those branches and subsidiaries; and
 - (b) be subject to independent review by the audit committee or the licensed insurer's external auditor.
 - (4) A licensed insurer that establishes an internal audit function shall submit to the Commission any report prepared by the internal audit function –
 - (a) where the internal audit function is outsourced, within seven days of the receipt of the report by the licensed insurer; and
 - (b) in any other case, within seven days of its preparation.
27. Risk management – (1) A licensed insurer shall establish and maintain –
- (a) a clearly defined strategy, and if the board considers it appropriate, policies, for the effective management of all significant risks that the insurer is or may be exposed to; and
 - (b) systems and controls that are sufficient to ensure that the risk management strategy and policies are effectively implemented.
- (2) The risk management strategy and policies shall –
- (a) be appropriate for the nature, size, complexity and diversity of the insurer's business;
 - (b) specify how risks are to be identified, measured, assessed, monitored, controlled and reported;
 - (c) where appropriate, set the level of risk that the licensed insurer is prepared to accept and authority levels for members of staff; and
 - (d) be approved, and reviewed on at least an annual basis, by the board.
- (3) The risk management strategy, policies, systems and controls shall be fully and clearly documented and effectively communicated and readily available to the directors and senior management and to those staff and other functionaries of the licensed insurer who have responsibility for implementing them.
- (4) The board and senior management of a licensed insurer has responsibility for –
- (a) ensuring that they understand all the risks to which the insurer is exposed in its business;
 - (b) assessing the resources required for an appropriate risk management system, including accurate and reliable management information and reporting systems, and for ensuring that the required resources are available; and
 - (c) overseeing the implementation of the insurer's risk management strategy, policies, systems and controls.
- (5) Without limiting this paragraph, the risk management systems and controls of a licensed insurer shall –
- (a) enable the insurer to monitor the adequacy and effectiveness of –

- (i) its risk management strategy and policies and their implementation;
 - (ii) measures taken to address any deficiencies identified in the risk management strategy, policies, systems and controls; and
- (b) ensure that any exceptions to the insurer's risk management strategy and policies are reviewed and authorised by senior management and, where appropriate, the board.

28. Business continuity plans – (1) A licensed insurer shall establish a business continuity policy, and put business continuity arrangements in place, aimed at ensuring that, in the event of an unforeseen interruption or disruption –

- (a) the insurer is able to continue to carry on its regulated business and to meet its obligations under the Act, the Code, the Financial Supervisory Commission Act 2003 and the Financial Transactions Reporting Authority Act 2004;
 - (b) losses to its functions, systems and data are limited and any losses may be recovered in a timely manner; and
 - (c) where the severity of the interruption or disruption results in the insurer ceasing its business, or any part of it, it is able to resume its business in a timely manner.
- (2) The business continuity policy and arrangements shall be –
- (a) appropriate for the nature, size, complexity and diversity of the insurer's business and the types and degree of risk to which it is exposed; and
 - (b) regularly reviewed and tested, and updated as required.

(3) Without limiting subparagraph (1) or (2), the interruptions and disruptions covered by the business continuity plan and arrangements shall include –

- (a) the loss or failure of internal and external resources, including human resources, systems and other assets;
- (b) the loss or corruption of data and other information; and
- (c) external events, such as cyclones and criminal acts.

29. Underwriting policies, systems and controls – (1) A licensed insurer shall establish and maintain –

- (a) an underwriting and pricing strategy and policies; and
- (b) systems and controls that are sufficient to ensure that the underwriting and pricing strategy and policies are effectively implemented.

(2) Without limiting subparagraph (1)(a), the underwriting and pricing policies shall provide for –

- (a) the evaluation of risks underwritten or to be underwritten;
- (b) the establishment of adequate premium levels;
- (c) the mitigation and diversification of risks by –
 - (i) defining limits on the amount of risk retained; and
 - (ii) providing for the transfer of appropriate levels of risk away from the insurer through adequate and appropriate reinsurance or other risk transfer arrangements.

(3) Without limiting subparagraph (1)(b), the systems and controls shall include controls of expenses related to premiums and claims.

(4) The underwriting and pricing strategy and the significant underwriting and pricing policies established under subparagraph (1), shall be approved, and reviewed on at least an annual basis, by the board.

(5) Senior management shall monitor the systems and controls established in accordance with subparagraph (1)(b) on an ongoing basis.

Obligations of Long-Term Insurers

30. Appointment of actuary – (1) A long-term insurer shall appoint and at all times have an actuary, unless the Commission, on the application of the insurer, otherwise directs.

(2) For the purposes of this paragraph, paragraph 31 and paragraph 32, a long-term insurer that is required to appoint an actuary by virtue of subparagraph (1) is referred to as a “relevant long-term insurer”.

(3) A relevant long-term insurer shall not appoint a person as its actuary unless the person has consented in writing to act as its actuary.

(4) A relevant long-term insurer shall, within 14 days of –

(a) the appointment of its actuary; or

(b) a person ceasing to be its actuary;

submit a notice in the approved form to the Commission.

31. Actuarial investigations – (1) A relevant long-term insurer shall cause an actuarial investigation to be made into its financial condition in respect of its long-term insurance business by its actuary –

(a) at least once each financial year; and

(b) if its actuary considers it necessary in order properly to monitor the insurer’s margin of solvency, as often as required by the actuary.

(2) The actuarial investigation must include a valuation of the liabilities relating to the insurer’s long-term business.

(3) A relevant long-term insurer shall make such arrangements as are necessary to enable its actuary to undertake an actuarial investigation under subparagraph (1), including by giving the actuary a right of access at all reasonable times to such records and documents as the actuary reasonably requires for the purposes of enabling him to properly perform his functions and duties.

(4) The actuary of a relevant long-term insurer shall produce a report of each investigation that he undertakes and the insurer shall, within fourteen days of receiving the report, submit a copy to the Commission.

(5) The report of the annual actuarial investigation of a long-term insurer must be submitted to the Commission together with the financial statements required to be submitted to the Commission under paragraph 49.

(6) The actuary shall undertake his investigation and produce his report in accordance with the professional standards applicable to him.

32. Powers and rights of actuaries – (1) The actuary of a relevant long-term insurer may require any director, employee or key functionary of the insurer to answer questions or produce documents for the purpose of enabling him to properly perform his functions and duties and a director, employee or key functionary of a relevant long-term insurer shall not refuse or fail, without reasonable excuse, to comply with a requirement of the actuary under this paragraph.

(2) The actuary of a relevant long-term insurer is entitled to attend meetings of the directors of the insurer and to speak on any matter being considered at the meeting –

- (a) that relates to, or may affect, the adequacy of the capital of the insurer, shareholders' funds, its solvency, its reserves or its financial condition;
- (b) that relates to advice given by the actuary to the directors; or
- (c) that concerns a matter in relation to which the actuary is or will be required to investigate, report on or give advice.

(3) The actuary of a relevant long-term insurer is entitled to attend any meeting of the members of the company at which –

- (a) the company's accounts or financial statements are to be considered; or
- (b) any matter in connection with the actuary's functions or duties is to be considered;

and to speak on the matter being considered at the meeting.

(4) If, without reasonable excuse –

- (a) a director, employee or key functionary of the insurer contravenes subparagraph (1); or
- (b) subsection (2) or (3) is contravened,

the actuary may report the matter to the Commission.

33. Segregation of assets and liabilities attributable to long-term business –

(1) A long-term insurer shall keep separate accounts for each class of long-term business that it undertakes, sufficient to ensure that the assets and liabilities attributable to each class of long term business can be readily identified at any time.

(2) All receipts from a long-term insurer's long-term business –

- (a) must be kept separately from all other assets in the insurer's possession or control;
- (b) must be lodged in a special fund (the "long-term fund"); and
- (c) subject to subparagraph (3), must not be applied to any purpose other than the purposes of the insurer's long-term business.

(3) Paragraph (2)(c) does not apply to any portion of the assets which is for the time being certified by the insurer's actuary as exceeding the liabilities of the insurer's long-term business, provided that the application of the funds in question does not have the effect of causing the solvency margin of the insurer to be reduced below the margin it is required to maintain under the Act.

(4) No transfer of assets in a long-term insurer's long-term fund, other than assets to which subparagraph (3) applies, shall take place without the authority of a resolution of the insurer's directors and the written consent of its actuary.

(5) If any part of the long-term business of a long-term insurer consists of contracts under which the benefits payable to policyholders are determined directly by reference to the value of, or the income from, assets of any description, the receipts of that part of that business shall be carried to, and shall form, a separate part of the long-term fund.

PART 4
PROVISIONS APPLICABLE TO LICENSED
INSURANCE MANAGERS AND INTERMEDIARIES

34. Restrictions on persons who may be licensed and on directors and others –

- (1) An insurance manager's licence will be granted only to a Cook Islands company.
- (2) An insurance broker's licence will be granted only to –
- (a) a Cook Islands company; or
 - (b) a company that is incorporated, constituted or formed outside the Cook Islands.
- (3) A director, officer or employee of a company holding a licence as an insurance broker or an insurance manager and a person holding a significant interest in an insurance broker or an insurance manager will not be granted a licence as an insurance agent.
- (4) A company holding a licence as an insurance agent will not be granted a licence as an insurance broker and a person holding a licence as an insurance broker will not be granted a licence as an insurance agent.
- (5) A director, officer or employee of a licensed insurer and a person holding a significant interest in a licensed insurer shall not be a director, officer or employee of, or hold a significant interest in, a person holding a licence as an insurance broker.

35. Professional indemnity insurance – (1) Professional indemnity insurance shall at all times be maintained in accordance with this paragraph by –

- (a) an insurance manager;
 - (b) an insurance broker; and
 - (c) an insurance agent that handles customer monies.
- (2) Subject to subparagraph (3), professional indemnity insurance maintained under subparagraph (1) shall provide a minimum level of indemnity equal to the greater of \$1,000,000 or three times the annual management or brokerage fees of the licensed insurance manager or insurance intermediary.
- (3) If having regard to the nature and extent of the business carried on by a person to whom this paragraph applies, the Commission considers it appropriate to do so, it may direct that person to maintain a higher level of indemnity than that provided for in subparagraph (2).
- (4) The professional indemnity insurance maintained under subparagraph (1) must include cover for the following risks –
- (a) any error or omission or negligence on the part of the manager or intermediary or on the part of his employees and directors;
 - (b) any loss of money or other property for which the manager or intermediary is legally liable in consequence of any financial or fraudulent act or omission;
 - (c) any loss of documents and costs and expenses incurred in replacing or restoring such documents;

- (d) dishonest or fraudulent acts or omissions by the employees or former employees of the manager or intermediary.

36. Minimum capital requirement - (1) A licensed insurance manager and a licensed insurance broker shall ensure that -

- (a) its fully paid up share capital is no less than \$30,000; and
- (b) at all times, it maintains minimum shareholders' funds of at least \$25,000.

(2) The above requirements are in addition to any requirements imposed on the licensed insurance manager or broker under any other enactment.

37. Corporate governance - (1) A licensed insurance manager, a licensed insurance broker and a licensed insurance agent shall ensure that it establishes and maintains a corporate governance framework appropriate to the nature, size, complexity and diversity of its business and the risks to which it is exposed.

(2) The corporate governance framework established and maintained under subparagraph (1) shall include -

- (a) the clear and appropriate apportionment of significant responsibilities among its directors (where, in the case of an insurance agent, it is a company), senior managers and key functionaries;
- (b) appropriate systems and controls, including internal controls;
- (c) the regular review and updating of its systems and controls;

and

- (d) an adequate span of control.

(3) Paragraph 21 of the Code applies to a licensed insurance manager, a licensed insurance broker and a licensed insurance agent that is a company with the modification that -

- (a) the words "insurance manager" "insurance broker" or "insurance agent" are substituted for "insurer" throughout the subparagraph(1); and
- (b) a licensed insurance manager, a licensed insurance broker and a licensed insurance agent that is a company shall have at least two directors.

38. Other strategies, policies, systems and controls - A licensed insurance manager, a licensed insurance broker and a licensed insurance agent shall have

- (a) an appropriate strategy and policies for the effective management of the significant risks to which it is exposed and systems and controls to ensure that the risk management strategy and policies are implemented; and
- (b) an appropriate business continuity policy and business continuity arrangements.

PART 5

PROVISIONS APPLICABLE TO ALL LICENSEES

Licence

39. Application for licence - An application for a licence shall –

- (a) be in the form,
- (b) contain the information,
- (c) be accompanied by the documents, and
- (d) be made in accordance with the instructions,

specified in the relevant Prudential Guideline on Licensing issued under section 98 of the Act.

40. Display of licence – (1) A person holding a licence specified in subparagraph (2) shall prominently display a copy of the licence at each place in the Cook Islands where it carries on its licensed business.

(2) Subparagraph (1) applies to –

- (a) an insurer holding a category A licence;
- (b) a licensed insurance manager; and
- (c) a licensed insurance intermediary.

41. Delivery of licence to Commission - A person holding a licence granted under the Act, or where the licence is revoked the person who held it immediately prior to the revocation, shall deliver the licence, and any copies of the licence that it holds, to the Commission if –

- (a) the licence is revoked; or
- (b) it is required by the Commission, for any reason, to do so.

Fit and proper criteria

42. Key functionaries – The key functionaries of a licensee are required to satisfy the Commission's fit and proper criteria.

43. Responsibility of licensee with respect to fit and proper assessment – (1) A licensee shall satisfy itself, prior to appointment and on an ongoing basis, that –

- (a) its directors and senior managers are fit and proper for the role to which they are appointed; and
- (b) where the licensee is required to appoint an insurance manager, auditor or actuary, the insurance manager, auditor or actuary appointed is fit and proper.

(2) If, whether before or after the Commission has approved the appointment of key functionary, or has approved a significant owner, the licensee becomes aware of any information that is reasonably material to the Commission's fit and proper assessment of the person, it shall notify the Commission of the information as soon as reasonably practicable

Accounting Records, Financial Statements and Audit

44. Application of paragraphs 45 to 51 – (1) Paragraphs 45 to 51 apply, to the extent specified, to –

- (a) a licensed insurer;
- (b) a licensed insurance manager; and
- (c) a licensed insurance broker.

(2) A licensee specified in subparagraph (1) is referred to in paragraphs 45 to 51 as a “relevant licensee”.

45. Meaning of “financial year” - (1) Subject to subparagraph (3), for the purposes of the Act and this Code, the financial year of a relevant licensee is –

- (a) in the case of its first financial year, the period from the date of its incorporation to the last day of the calendar quarter in which the anniversary of its incorporation falls; and
- (b) in the case of subsequent financial years, the period of one year commencing on the day immediately after the end of its previous financial year.

(2) Paragraph (1) applies whether or not financial statements have actually been prepared for the financial year in question.

(3) The Commission, whether on the application of a relevant licensee or of its own volition, may direct that the financial year of a licensee shall be –

- (a) where a relevant licensee is part of a group of companies, the financial year or period used for the group financial statements; or
- (b) in any other case, such other period, ending on the last day of a calendar quarter, that the Commission considers appropriate.

46. Preparation of financial statements - (1) In the Act and this Code, “financial statements” in relation to a relevant licensee and to a financial year, means –

- (a) a statement of the financial position of the licensee as at the last date of the financial year;
- (b) a statement of the financial performance of the licensee in relation to the financial year;
- (c) a statement of cash flows for the licensee in relation to the financial year;
- (d) in the case of a relevant licensee that is an insurer, a statement of solvency showing the solvency margin of the insurer as at the last date of the financial year;
- (e) such statement relating to the prospects for the licensee’s business as may be required or specified by the accounting standards in accordance with which the licensee’s financial statements are prepared; and
- (f) such other statements as may be required or specified by the accounting standards in accordance with which the licensee’s financial statements are prepared;

together with any notes or other documents giving information relating to the matters specified in paragraphs (a) to (f).

(2) Where a relevant licensee is a long-term insurer that is required to appoint an actuary, the statement of solvency must be endorsed by the insurer’s actuary following the completion of his actuarial investigation.

(3) A relevant licensee shall prepare financial statements for each financial year that give a true and fair view of the matters to which they relate and that comply with any of the following internationally recognised accounting standards –

- (a) the International Financial Reporting Standards [IFRS] currently in force;

- (b) New Zealand Generally Accepted Accounting Practice (NZ GAAP);
 - (c) such other international accounting standards as may be approved by the Commission.
- (4) If, in complying with the accounting standards in accordance with which they are prepared, the financial statements do not give a true and fair view of the matters to which they relate, the notes to the financial statements must contain such information and explanations as will give a true and fair view of those matters.
- (5) The notes to the financial statements must state the accounting standards in accordance with which they have been prepared.
- (6) The financial statements prepared under subparagraph (2) must be –
 - (a) approved by the directors of the licensee; and
 - (b) following approval under paragraph (a), signed by at least one director on behalf of all the directors who shall state the date when the financial statements were approved by the directors and the date when he signs the financial statements.

47. Appointment of auditor – (1) A person shall not be appointed, or accept appointment, as auditor of a relevant licensee unless he is independent of the licensee and has no conflicts of interest with respect to the licensee.

(2) Where a relevant licensee or its auditor is of the opinion that the auditor is not independent of the licensee, the relevant licensee or auditor shall provide written notification of this opinion to the Commission.

(3) A relevant licensee shall not appoint a person as its auditor unless the person has consented in writing to acting as auditor of the licensee.

48. Audit and auditor's report - (1) The auditor of a relevant licensee shall –

- (a) audit the licensee's financial statements and report to the licensee in accordance with –
 - (i) the auditing standards specified by the recognised professional body of which he is a member; or
 - (ii) such other recognised international auditing standards as may be approved by the Commission; and
 - (b) certify the licensee's compliance with such obligations and matters as may be specified in the Act or this Code;
 - (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the licensee and the auditor; and
 - (d) carry out such other duties as may be required of the auditor by the Act or this Code.
- (2) Without limiting subparagraph (1), an auditor's report –
- (a) shall state whether, in the auditor's opinion, the financial statements –
 - (i) have been properly prepared in accordance with the recognised accounting standards stated in the notes to the accounts;
 - (ii) give a true and fair view of the matters specified in paragraph 46 46(1); and

- (iii) are in accordance with the provisions of the Act and this Code; and
 - (b) must make specific reference to any transaction, other than a transaction in the normal course of the licensee's business, which, in the auditor's opinion, results in the statement of the financial position of the licensee showing a situation materially different from that which would otherwise have been the case and which is not adequately disclosed in the financial statements.
- (3) If the auditor is of the opinion that –
 - (a) the relevant licensee has not complied with its obligations under the Act with respect to the keeping of accounting records;
 - (b) the financial statements are not in agreement with the licensee's accounting records; or
 - (c) he has not received all the information and explanations which he considers necessary for him to carry out his audit;he shall include a statement to that effect in the audit report.

49. Submission of financial statements to Commission - (1) The financial statements signed by a director in accordance with paragraph 46 must be submitted to the Commission within five months of the end of the financial year to which they relate, or such extended time as the Commission may allow, accompanied by –

- (a) a directors' certificate in the approved form;
- (b) the auditor's report; and
- (c) any report on the affairs of the relevant licensee made to the members or policyholders of the licensee in respect of the relevant financial year.

(2) Unless the financial statements are accompanied by the documents specified in subparagraph (1), the Commission will consider that they have not been submitted to it.

50. Submission of unaudited financial statements and reports – (1) A relevant licensee shall submit to the Commission financial statements and a report in the approved form, accompanied by a directors' certificate in the approved form, with respect to –

- (a) each calendar quarter; and
- (b) such other periods as the Commission may, by written notice, require on a case-by-case basis.

(2) The financial statements and report specified in subparagraph (1) must be submitted to the Commission –

- (a) in the case of the financial statements and report for a calendar quarter, within three weeks of the end of the quarter, or such extended time as the Commission may allow; or
- (b) in the case of other financial statements and reports required to be submitted by the Commission, within such time as may be specified by the Commission in its written notice to the relevant licensee.

(3) Unless the financial statements and report required to be submitted by paragraph (1) are accompanied by a directors' certificate in the approved form, the Commission will consider that they have not been properly submitted to it.

(4) In this paragraph, "financial statements" has the meaning specified in paragraph 46 46(1) with the substitution for "financial year" of "calendar quarter" or the period specified by the Commission, as the case may be.

51. Amendment of financial statements - (1) If the Commission considers that any document submitted by a relevant licensee under paragraph 46 or 49 is inaccurate or incomplete or is not prepared in accordance with the Act or this Code, it may by written notice require the licensee to amend the document or to submit a replacement document.

(2) If a relevant licensee fails to comply with a notice under subparagraph (1), the Commission may reject the document.

(3) A document amended by a relevant licensee is treated as having been submitted in its amended form.

52. Provision of financial statements to policyholders - (1) An insurer that holds a category A or a category B licence shall, at the request of a policyholder, provide him with a copy of its audited financial statements.

(2) An insurer that holds a category B licence shall, at the request of a policyholder, provide him with a copy of the audited financial statements of its holding company.

(3) A licensed insurer is entitled to charge a reasonable fee for providing its, or its holding company's, audited financial statements to a policyholder.

Record Keeping

53. Maintenance of records - (1) A licensee shall keep adequate and orderly records which shall include records of its business, including all services provided to, and transactions undertaken for, customers, and of its internal organization.

(2) The records kept by a licensee shall be sufficient to enable the Commission to monitor the compliance of the licensee with its obligations under the Act, this Code, the Financial Services Supervisory Commission Act 2003 and the Financial Transactions Reporting Authority Act 2004.

(3) A licensee shall –

(a) maintain its records so that they can be readily retrieved in the Cook Islands and, if kept otherwise than in legible form, so that they can be accessed and read at a computer terminal in the Cook Islands and produced in the Cook Islands in legible form and in the English language without delay; and

(b) ensure that its records are kept up to date and that a full audit trail is maintained of all changes to its records.

54. Records retention policy – (1) A licensee shall establish a record retention policy which shall include –

(a) the period of time for which various types of record will be retained, which shall be no less than the minimum period specified in subparagraph (2);

- (b) how records are to be securely and safely stored; and
- (c) the process by which stored records can be readily accessed when required by the licensee, the Commission, law enforcement agencies or other persons entitled to access them.

(2) Subject to any enactment requiring a licensee to retain records for a longer period, a licensee shall retain all records that it is required to maintain under this Code for a period of at least six years.

(3) In the case of records relating to transactions with a customer, the six-year period shall commence on the termination of the licensee's relationship with the customer.

Outsourcing

55. Restrictions on outsourcing – (1) A licensee shall not –

- (a) outsource the compliance function or a core management function; or
- (b) outsource an activity if the outsourcing of that activity would -
 - (i) impair the Commission's ability to supervise the licensee; or
 - (ii) affect the rights of a customer against the licensee, including the right to obtain legal redress.

(2) Without limiting subparagraph (1), the following are "core management functions" -

- (a) the setting and approval of the licensee's risk management and other strategies;
- (b) the oversight of the licensee's policies, systems and controls; and
- (c) the responsibility for the delivery of services to the licensee's customers.

56. Outsourcing policy – (1) A licensee shall not outsource activities to a service provider unless it has established a comprehensive outsourcing policy with respect to the activities to be outsourced [the "relevant activities"].

(2) The outsourcing policy –

- (a) shall -
 - (i) consider the potential effects of outsourcing on the compliance function;
 - (ii) include an evaluation of whether, and the extent to which, the relevant activities are appropriate for outsourcing;
 - (iii) specify criteria for making outsourcing decisions, including how, and to whom, particular types of relevant activities should be resourced; and
 - (iv) provide for outsourcing only as permitted by, and in accordance with, this Code.
- (b) may, on a risk-based basis, take into account the extent to which the activity to be outsourced is material to its regulated business.

- (3) The board of a licensee –
 - (a) shall approve the licensee's outsourcing policy and keep it under review; and
 - (b) is responsible for ensuring that –
 - (i) outsourcing decisions are taken; and
 - (ii) outsourced activities are undertaken; in accordance with the licensee's outsourcing policy.

57. Outsourcing systems and controls – (1) A licensee that outsources any activities shall establish and maintain appropriate and adequate systems and controls to manage its outsourcing risk.

(2) Without limiting subparagraph (1), the outsourcing management risk systems and controls shall provide for the monitoring and controlling of the licensee's outsourcing arrangements.

58. Outsourcing arrangements – (1) A licensee shall, before entering into any arrangement for the outsourcing of activities to a service provider, undertake appropriate due diligence with respect to the service provider to enable it to assess –

- (a) the service provider's capacity and ability to undertake the outsourced activities; and
- (b) the risks associated with outsourcing the proposed activities to the service provider.

(2) The outsourcing of an activity shall be governed by a written contract with the service provider that –

- (a) clearly specifies all material aspects of the outsourcing arrangement, including –
 - (i) the activities to be outsourced;
 - (ii) the rights and responsibilities of the parties; and
 - (iii) the protection by the service provider of confidential information relating to the licensee or its customers;
- (b) gives the licensee and, if relevant, its auditor and actuary, access to all documents and information relevant to the outsourced activity, at all times; and
- (c) provides for the orderly termination of the outsourcing arrangement.

(3) A licensee shall establish and maintain a contingency plan for each outsourcing agreement that it enters into.

Returns and Notices

59. Annual return – (1) Every licensee shall submit to the Commission an annual return in the approved form –

- (a) where he is required to submit financial statements to the Commission in accordance with paragraph 49 49, together with those financial statements;
- (b) in any other case, on or before 31 December each year.

(2) A licensed insurer shall, together with the annual return, submit an up to date business plan to the Commission in the form that would be required if it was applying for a licence.

(3) An insurance manager shall, together with the annual return, submit to the Commission –

- (a) a list of licensed insurers for which it has acted during the year covered by the return; and
- (b) evidence of current professional indemnity cover complying with paragraph 35 35;

(4) An insurance intermediary shall, together with the annual return, submit to the Commission –

- (a) a list of insurers, whether licensed under this Act or not, with which it has placed business in the year covered by the return; and
- (b) where applicable, evidence of current professional indemnity cover complying with paragraph 35;

60. Judgments – A licensee shall notify the Commission of any judgment obtained against it and shall provide the Commission with evidence as to whether or not the judgment has been satisfied.

PART 6

MISCELLANEOUS PROVISIONS

61. Service of notices – (1) Where a notice is required by this Act, the regulations or this Code to be sent by a licensee to a policyholder, it may be sent to the last address of the policyholder notified by the policyholder to the licensee.

(2) Where a person claiming to be interested in a policy has given notice of his interest to a licensee, any notice required to be sent by the licensee to a policyholder shall also be sent to the person claiming an interest at the address specified by him in his notice to the licensee.

Grover L. Harmon
Clerk of the Executive Council

This Code is administered by the Office of the Financial Supervisory Commission

BY AUTHORITY:
Government of the Cook Islands, 2010

SCHEDULE 1**ADMISSIBLE AND INADMISSIBLE ASSETS****INADMISSIBLE ASSETS**

1. The following assets are inadmissible assets -
 - (a) Intangible assets
 - (b) Loans, or any amounts due from related companies or related parties
 - (c) Loans to insurance intermediaries
 - (d) Loans, and any other amounts due, that are overdue more than 180 days, including -
 - (i) insurance premiums,
 - (ii) inwards reinsurance, and
 - (iii) reinsurance recoveries
 - (e) Amounts secured or pledged on any asset or assets
 - (f) Merchandise inventory
 - (g) Prepaid expenses
 - (h) Furniture and fixtures

ADMISSIBLE ASSETS

Asset	Discount
Cash and Government bonds	0%
Term deposits and bonds	2%
Deposits in other financial institutions	3%
Corporate bonds	5%
Real estate mortgages	5%
Direct real estate investments, owner occupied	8%
Corporate shares	10%
Direct real estate investments rented to third parties	10%
Commercial Loans	10%
Shares in private companies	10%
Receivables outstanding more than 90 days but less than 180 days	10%
Other Loans to third parties	10%

1. In determining the value of its assets for the purposes of calculating its margin of solvency, a licensed insurer shall include only those assets that are specified in the first column in the table above as admissible assets, but shall discount the value of the admissible assets by the percentage shown against the asset in the second column in the table above.
2. The value of an asset –
 - (a) is the market value of the asset determined using a reputable source, where such a source is available; or
 - (b) where it is not possible to determine the market price of an asset, its value is a price which, in the opinion of the insurer, represents its fair value determined in accordance with generally accepted accounting standards.

SCHEDULE 2**LICENSED AND APPROVED EXTERNAL INSURERS**

1. (1) For the purposes of this Schedule, “specified external insurer” means—
 - (a) an insurer holding a category B licence; or
 - (b) an approved external insurer.
- (2) This Code is disapplied or modified, to the extent specified, with respect to a specified external insurer.
2. Paragraphs 21, 25, 26, 27, 30, 31, 32, 45, 46, 47, 48, 50, 51 and 55, 56, 57, and 58 are disapplied with respect to a specified external insurer.
3. Paragraphs 20, 22, 23, 24, 28, 29, 33, 54 (1), 56, 57, and 58 apply to a specified external insurer with respect to its Cook Islands insurance business.
4. Paragraph 40 applies to a specified external insurer holding a category B licence with respect to every premises in the Cook Islands where its licensed business is carried on.
5. Paragraphs 42 and 43 apply with respect to any key functionary of a specified external insurer in the Cook Islands.
6. A specified external insurer shall submit to the Commission a copy of such annual financial statements as it is required to prepare in its home jurisdiction together with the auditor’s report on the financial statements, within three months of its financial year end or such longer period as may be authorised by the Commission and paragraph 49 is otherwise disapplied.
7. Paragraph 53 is modified with respect to a specified external insurer as follows:
 - (a) Subparagraph (1) applies to the insurer with respect to its Cook Islands business.
 - (2) Subparagraph (3) is disapplied and the following subparagraph substituted:

“(3) A licensed external insurer and an approved external insurer shall ensure that the records that it is required to maintain under subparagraphs (1) and (2) –

 - (i) can be made available to the Commission on its request, in the English language, within a reasonable period of time;

- (ii) are kept up to date and that a full audit trail is maintained of all changes to the records.
- 8. An external insurer that holds a category B licence shall appoint a person approved by the Commission as its representative in the Cook Islands.
- 9. An approved external insurer shall appoint one or more licensed insurance agents.

SCHEDULE 3**LICENSED EXTERNAL INSURANCE INTERMEDIARIES**

1. This Code is disapplied or modified, to the extent specified, with respect to a licensed external insurance intermediary.
2. Paragraphs 36, 37(3), 45, 46, 47, 48, 51, 54(1), 55, 56, 57, and 58 are disapplied to a licensed external insurance intermediary.
3. Paragraphs 37(2) and 38(1) apply to a licensed external insurance intermediary with respect to its Cook Islands business.
4. Paragraphs 42 and 43 apply with respect to any key functionary of a licensed external insurance intermediary in the Cook Islands.
5. A licensed external insurance intermediary shall submit to the Commission a copy of such annual financial statements as it is required to prepare in its home jurisdiction together with the auditor's report on the financial statements, if required in its home jurisdiction, within three months of its financial year end or such longer period as may be authorised by the Commission and paragraph 49 is otherwise disapplied.
6. Paragraph 50(1), (2) and (3) are modified with respect to a licensed external insurance intermediary by deleting, in each subparagraph, the words "financial statements and" and paragraph 50(4) does not apply in the case of a licensed external insurance intermediary.
7. Paragraph 53 is modified with respect to a licensed external insurance intermediary as follows -
 - (a) Subparagraph (1) applies to a licensed external insurance intermediary with respect to its Cook Islands business.
 - (2) Subparagraph (3) is disapplied and the following subparagraph substituted:

“(3) A licensed external insurance intermediary shall ensure that the records that it is required to maintain under subparagraphs (1) and (2)

—

 - (i) can be made available to the Commission on its request, in the English language, within a reasonable period of time;
 - (ii) are kept up to date and that a full audit trail is maintained of all changes to the records.