



DLA PHILLIPS FOX

EVERYTHING MATTERS

Regulation of the Insurance Industry in New Zealand

From the Wild West to Australia Lite

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Introduction



- The Insurance Council of New Zealand website says:

New Zealand has one of the least regulated insurance markets in the world

- Not for much longer!

Overview

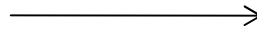


Financial Advisers Act (FAA)



Regulates anyone **advising** about **insurance products** – both intermediaries and underwriters

Financial Service Providers (Regulation and Dispute Resolution) Act (FSPA)



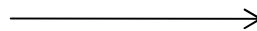
Requires all: (a) advisers caught by FAA, and (b) all underwriters present in NZ **to be registered** and to **belong to a dispute resolution scheme**

Insurance (Prudential Supervision) Bill



Regulates all **underwriters carrying on insurance business in NZ**

Insurance Contracts Bill (proposed)



Will **modify core insurance law** in NZ – particularly the duty of disclosure and agency laws.

Financial Advisers Act



- You are a 'financial adviser' under the Act if:
 - In the course of business, and in relation to **purchasing** or **cancelling** insurance you:
 - Make a recommendation
 - Give an opinion
 - Give guidance
 - You receive, handle, pay or invest the money of another person in relation to **purchasing** or **cancelling** insurance

Financial Advisers Act



- Nearly all insurance products are Category 2 Products
- A financial adviser of Category 2 Products must:
 - Register in own name under the FSPA or be an employee or agent of a Qualified Financial Entity (QFE) registered with the Securities Commission
 - Disclose his or her registration/disputes resolution scheme/contact details
 - Exercise the care, diligence and skill that a reasonable financial adviser would exercise in all the circumstances

Financial Service Providers (Registration and Dispute Resolution) Act



- Applies to all 'financial advisers' under the FAA and all insurers and reinsurers present in New Zealand
- Must register with Registrar of Financial Service Providers
- Must belong to an approved disputes resolution scheme if provide a financial service to the public (not reinsurers):
 - Scheme must have Rules similar to ISOs
 - Scheme applies to businesses with up to 19 employees
 - Maximum jurisdiction has not been set yet.

Territorial Limits



- FAA applies to a ‘financial adviser service’ performed in NZ **regardless of where the person performing it is**
- FSPA applies to a financial service performed **by a person in New Zealand**
- The difference seems illogical:
 - A ‘financial adviser’ performs a ‘financial adviser service’
 - An overseas ‘financial adviser’ must comply with FAA
 - The FAA says a ‘financial adviser’ must be registered under the FSPA
 - But the FSPA does not apply to an overseas person?

Insurance (Prudential Supervision) Bill



- Reserve Bank of New Zealand (RBNZ) is the insurance regulator and industry supervisor
- RBNZ is responsible for:
 - Issuing licences
 - Prudential supervision, mainly based on documents filed by insurers
 - Taking action against insurers who fail, or are likely to fail

Insurance (Prudential Supervision) Bill



- Must obtain licence if underwriter ‘carries on insurance business in New Zealand’:
 - Incorporated in NZ, or
 - Overseas company that must register under Companies Act 1993, or
 - Domiciled in NZ
- What amounts to an overseas company doing business in NZ under the Companies Act 1993 is unclear

Insurance (Prudential Supervision) Bill



There are four main parts to the Bill's prudential regulation approach:

- Credit Ratings**
- Fit and Proper Persons**
- Risk Management Programme**
- Solvency Requirements**

Insurance (Prudential Supervision) Bill



Credit Ratings

- All licensed insurers must have a rating unless annual gross premium below a yet to be specified amount
- Failure to disclose will become a criminal offence (\$500,000 fine)
- No longer need to disclose the date of the rating, or credit watch warnings
- Overseas insurers must disclose any 'home' policy holder preference

Insurance (Prudential Supervision) Bill



Fit and Proper Persons Policy

- Must have a written policy covering who can be a board member, CEO, CFO and actuary
- 'Fit' deals with competency
- 'Proper' deals with integrity/reputation

(Prudential Supervision) Bill



Risk Management Programme

- Must have a Risk Management Programme (**RMP**)
- RMP must:
 - Cover insurance, credit, liquidity, market and operational risks
 - Have appropriate and auditable documents
 - Detail steps to keep it current

Insurance (Prudential Supervision) Bill



Solvency Requirements

- Must at all times have capital in excess of the minimum required (complicated)
- Must appoint an actuary (either internal or external)
- Must report to RBNZ twice a year against solvency standard
- Must notify RBNZ if expect to fail solvency standard

Insurance (Prudential Supervision) Bill



Life Insurance

- Definition of 'life insurance' excludes death by accident (injury) and disability policies of no more than 1 year's duration
- All life policies must be held in a statutory fund. Special rules apply to that fund
- General insurance and life insurance can be run by one legal entity so long as life insurance transacted in a statutory fund

Insurance (Prudential Supervision) Bill



Implications

- No drastic impact on market
- Cost and compliance pressures will increase
- Some rationalisation may occur in the market
- It will take time to put steps in place to obtain and retain licence – start early. Deadline expected to be the end of 2010

Insurance Contracts Bill (proposed)



- On backburner
- Modify duty of disclosure – limit retrospective avoidance to:
 - Materially incorrect answers to specific questions expressly put in proposal, or
 - Reasonable insured test, or
 - Fraud
- Rewrite test for who intermediary is acting for, and when
- Fix Section 9 ILRA 1977 - claims-made policies
- Fix Section 11 ILRA 1977 – age and restricted licence exclusions

Regulation of the Insurance Industry in New Zealand



Questions?