



INSURANCE REGULATIONS 2009

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga, this 17th day of September 2009

Present:

HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE
IN EXECUTIVE COUNCIL

PURSUANT to section 95 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 regulations:

ANALYSIS

- | | | | |
|----|---|-----|--|
| 1. | PART 1
PRELIMINARY
Title | 9. | Report on scheme of transfer or merger |
| 2. | Interpretation | 10. | Powers of Court or Commission with respect to investigations, reports etc. |
| 3. | Person resident in the Cook Islands | 11. | Court Order sanctioning scheme |
| 4. | Classes of insurance business | 12. | Scheme in case of certain category C licensed insurers |
| 5. | PART 2
TRANSFERS AND MERGER
Exempted category C licensed insurers | | PART 3
MISCELLANEOUS
PROVISIONS |
| 6. | Activities exempted from provisions of section 41 | 13. | Publication of Code and approved forms by Commission |
| 7. | Interpretation for this Part | | Fees and penalties |
| 8. | Application for approval of scheme | 14. | Schedules |

REGULATIONS

PART 1
PRELIMINARY

1. Title – These regulations may be cited as the Insurance Regulations 2009.

2. Interpretation – (1) In these regulations, unless the context otherwise requires, “Act” means the Insurance Act 2008.

“Global insurance programme” means insurance business that comprises a policy or policies issued by an insurer with a coverage territory encompassing the entire world, including the country in which the insured is domiciled for the benefit of an insured person whose activities are in the nature of a multinational business or group of related persons whose activities, collectively, is in that nature;

“Offshore entity” means an international company incorporated, or a foreign company registered under the International Companies Act 1981-82, an international trust registered as such pursuant to the International Trusts Act 1984 or an international partnership or limited international partnership in each case registered under the International Partnership Act 1984;

“Travel insurance” means a contract of insurance to indemnify or compensate a person in respect of any loss or damage, including the liability to pay damages or compensation contingent upon the happening of a specified event, in respect of and/or pertaining to the duration of, the insured person’s travel and absence from usual place of abode, and the risks of personal injury and damage or loss to property generally regarded as inherent in travel and in being absent from one’s usual residence or place of abode (but does not include any contract of insurance that relates, wholly or substantially, to risks in respect of property rights in or liability for the operation of any vehicle boat aircraft or other means of conveyance).

(2) Words and expressions defined in the Act have the same meaning in these regulations.

3. Person resident in the Cook Islands – (1) Subject to sub-regulation (2), for the purposes of the Act, these regulations, the Insurance Code and any Prudential Guidelines issued under the Act, a person is resident in the Cook Islands if the person is –

- (a) an individual who is ordinarily resident in the Cook Islands;
- (b) a company incorporated under the Companies Act 1970-71 or an overseas company registered under the Companies Act 1970-71;
- (c) an offshore entity, but only with respect to a risk located in the Cook Islands; or
- (d) a partnership or other unincorporated body of persons. that, in each case, carries on business in the Cook Islands.

(2) A company that is a trustee company shall not be regarded as resident in the Cook Islands where it enters into a contract of insurance as a policyholder in its capacity as the trustee of a trust that is either an international trust registered, as such, under the International Trusts Act 1984 or a trust the beneficiaries of which are not themselves resident in the Cook Islands and which relates to the ownership management or administration of an offshore entity.

4. Classes of insurance business - The classes of insurance business specified in accordance with section 2(1) of the Act are set out in Schedule 1, Part A (general business) and Part B (long-term business).

PART 2

TRANSFERS AND MERGER

5. Exempted category C licensed insurers - Each of the following licensed insurers shall, for so long it holds a category C licence, be exempt from the obligation imposed by section 30(1) of the Act, to appoint and at all times have an insurance manager who shall be a person licensed to carry on business as an insurance manager under Part 4 of the Act –

- (i) International General Insurance;
- (ii) Physicians Insurance Services Inc;
- (iii) Southpac Life Insurance Limited.

6. Activities exempted from provisions of section 41 - The following activities are exempted from the provisions of section 41 of the Act –

- (i) the sale of consumer credit by a person who carries on or holds himself out as carrying on business as an insurance manager or an insurance intermediary in or from the Cook Islands, but only to the extent of sales the aggregate gross written premiums of which are less than \$5000 in any calendar year;
- (ii) the sale of travel insurance by a person who carries on or holds himself out as carrying on business as an insurance manager or an insurance intermediary in or from the Cook Islands and who is a member of the International Association of Travel Agents; and
- (iii) the sale of any contract of insurance that is, or forms part of, a global insurance programme notwithstanding that programme may relate, in part, to a risk or risks located in the Cook Islands

7. Interpretation for this Part – In this Part –

“reporting expert” means the person appointed to make a scheme report;

“scheme” means a scheme of transfer or merger required by section 38 of the Act;

“scheme report” means the report on a scheme required to be made by regulation 9.

“transferring insurer” means the licensed insurer whose business is to be transferred or merged under a scheme;

“transferee” means the person –

- (a) to whom the business of the transferring insurer is to be transferred; or

- (b) with whose business the transferring insurer's business is to be merged.
8. Application for approval of scheme – (1) In the case of a scheme with respect to the business of a general insurer, the applicants may, at their election, apply to the Court or the Commission for approval of the scheme.
- (2) Where an application for approval of a scheme with respect to a general insurer has been made to the Commission –
- (a) the Commission may, at any time prior to making a final determination with respect to the application, decline to make such a determination;
- (b) no application may be made to the Court with respect to the scheme, or another scheme having an equivalent effect, except in accordance with sub-regulation (3).
- (3) Where the Commission declines to determine an application for the approval of a scheme, the applicants may make application to the Court for approval of the scheme.
- (4) Sub-regulation (2)(b) does not apply with respect to –
- (a) an appeal to the Court against a determination made by the Commission; or
- (b) any application for judicial review that could, apart from that sub-regulation, be made by any person with respect to the application.
- (5) The Commission shall be given notice of any application made to the Court for the approval of a scheme.
- (6) The Commission, and any person who claims that he would be adversely affected by a scheme, shall have the right to be heard at any hearing of, or relating to, an application for the approval of a scheme by the Court.
9. Report on scheme of transfer or merger – (1) Subject to regulation 8, an application to the Commission or the Court for the approval of a scheme under section 38 of the Act shall be accompanied by a report on the scheme made by a person approved by the Commission in writing as reporting expert.
- (2) The Commission shall not approve a person as reporting expert unless it is satisfied that the person –
- (a) has the skills and experience necessary to make the report;
- (b) is independent of the transferring insurer and of each other person who is a party to the scheme; and
- (c) otherwise satisfies its fit and proper criteria.
- (3) A scheme report shall –
- (a) contain information relating to the appointment of the person who made the report, including details of the person who appointed him and the date of the Commission's approval of his appointment;
- (b) set out the qualifications and experience of the reporting expert;
- (c) specify the purpose of the scheme and summarise its terms;
- (d) summarise the work that the reporting expert has undertaken in preparing the report;

- (e) specify the reliance that the reporting expert has placed on reports, documents and other information which he has used to prepare the report and why such reliance is reasonable;
- (f) set out the reporting expert's opinion on the likely effects of the scheme on the policyholders of the transferring insurer and the transferor;
- (g) specify any limitations with respect to the scheme report; and
- (h) indicate whether, in the opinion of the reporting expert, he has obtained all the information and explanations that he requires to make the report.

10. Powers of Court or Commission with respect to investigations, reports etc. – Regulations 6 and 7 do not limit the power of the Court or the Commission to require an investigation to be undertaken into a scheme pursuant to section 38(3) of the Act, which may include an investigation by an actuary.

(2) The Court or the Commission may require the applicant to submit such further reports, documents or information as the Commission or the Court considers that it reasonably requires to determine the application.

11. Court Order sanctioning scheme – Where the Court approves a scheme, it may make such order or orders as it considers appropriate to ensure that the scheme is fully and effectively carried out.

12. Scheme in case of certain category C licensed insurers – (1) Regulation 7 does not apply where, in an application to the Court or the Commission –

- (a) the transferring insurer holds a category C licence; and
- (b) every policyholder of the transferring insurer, whether or not his policy is included in the business to be transferred or merged, consents to the scheme.

(2) An application to the Commission or the Court for the approval of a scheme under this regulation shall be accompanied by evidence satisfactory to the Court or the Commission of the matters stated in sub-regulation (1)(a) and (b).

PART 3 **MISCELLANEOUS PROVISIONS**

13. Publication of Code and approved forms by Commission – (1) For the purposes of sections 96(5)(a) and 97(1), the draft Code, any proposed amendment, addition to or replacement of the Code and an approved form shall be published

- (a) in the Gazette;
- (b) on the Commission's website; or
- (c) both in the Gazette and on the Commission's website.

(2) The following apply to the publication of a document on the Commission's website -

- (a) the document shall be posted in an area of the website that is generally accessible to the general public;
- (b) in the case of the draft Code or any proposed amendment, addition to or replacement of the Code -
- (i) the document shall be accessible on a continuous basis during the consultation period; and

(ii) the opening page of the website shall specify all documents currently posted on the website that are open for consultation.

(3) In determining whether a document published on the Commission's website is accessible on a continuous basis, no account shall be taken of periods during which the Commission's website is unavailable for upgrading, servicing or maintenance or for security reasons or other reasons outside the Commission's control.

(4) The period for which a document specified in sub-regulation (2)(b) is open for consultation, whether the document is published in the Gazette or on the Commission's website ("the consultation period") shall be reasonable given the complexity and length of the document.

(5) The consultation period for a document and the manner in which representations may be made shall be specified in a notice published together with the document.

14. Fees and penalties – For the purposes of section 94 of the Act, the fees and penalties payable to the Commission are specified in Schedule 2.

Clerk of the Executive Council

These Regulations are administered by the Financial Supervisory Commission

BY AUTHORITY:
Cook Islands Government – 2009

SCHEDULE 1

CLASSES OF INSURANCE BUSINESS

PART A - CLASSES OF GENERAL BUSINESS

1. Accident, sickness and travel

1.1 Subject to paragraph 1.2, contracts of insurance against any, or a combination of, the following risks:

- (a) the person insured sustaining injury or dying as the result of an accident;
- (b) the person insured becoming incapacitated as a result of disease
- (c) losses to the person insured that are attributable to sickness or infirmity;
- (d) the person insured sustaining loss or requiring assistance while travelling, including loss of baggage, money or deposits, medical expenses and other contingencies.

1.2 A contract of insurance that fall within Class 13 is excluded from this Class.

2. Property, including goods in transit

2.1 Contracts of insurance against the loss of, or damage to property (excluding motor vehicles, ships or aircraft) as a result of a specified event or events, including (but not limited to) fire, theft, and natural forces.

2.2 Contracts of insurance against loss of or damage to property in transit, irrespective of the form of transport.

3. Motor vehicles, including liability (domestic and commercial)

3.1 Contracts of insurance against any, or a combination of, the following risks:

- (a) loss of or damage to motor vehicles;
- (b) damage arising out of, or in connection with, the use of motor vehicles including third party risks and carrier's liability.

3.2 For the purpose of this paragraph, "motor vehicle" is any vehicle intended for travel on land and propelled by mechanical power and any trailer whether or not coupled.

4. Marine and aviation

4.1 Contracts of insurance against any, or a combination of, the following risks:

- (a) loss of or damage to ships;
- (b) damage arising out of, or in connection with, the use of ships including third party risks and carrier's liability.

4.2 Contracts of insurance against any, or a combination of, the following risks:

- (a) loss of or damage to aircraft;
- (b) damage arising out of, or in connection with, the use of ships including third party risks and carrier's liability.

4.3 For the purposes of this paragraph, "ship" and "aircraft" include the machinery, equipment and fittings of a ship or aircraft, as the case may be.

5. Liability

Contracts of insurance against risks of the person insured incurring liabilities to third parties, excluding any risk falling within class 3 or 4.

6. Financial loss

6.1 Contracts of insurance against financial losses not falling within any other paragraph in this Schedule, including contracts of insurance against any, or a combination of, the following risks:

- (a) loss to the person insured arising from the failure of their debtors to pay their debts when due whether arising out of the debtors' insolvency or otherwise (credit insurance); or
- (b) loss to the person insured arising from an obligation to perform contracts of guarantee that they have entered into.

6.2 Fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or other similar contracts of guarantee where, in any case the bond or guarantee

- (a) is not entered into by a person carrying on banking business bank; and
- (b) is effected for the payment of one or more premiums.

7. Business interruption

Contracts of insurance against losses caused by an interruption to a business carried on by the insured, or a reduction of scope of such a business.

8. Legal expenses

Contracts of insurance against the risk of losses to the person insured attributable to their incurring legal expenses, including the costs of litigation.

9. Other general business

Contracts of insurance, not included in classes 1 to 8 that the Commission determines constitute general insurance business.

PART B - CLASSES OF LONG-TERM BUSINESS

10. Life

Contracts of insurance on human life that provide for the payment of a benefit on the death of the insured, being a lifetime policy or for a specified term (excluding any contract falling within Class 11).

11. Linked life

Contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

12. Annuities

Contracts of insurance to pay annuities on human life, but excluding (in each case) contracts within.

13. Permanent health

Contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that—

- (a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time; and
- (b) either are not expressed to be terminable by the insurer, or are expressed to be terminable only in special circumstances specified in the contract.

14. Other long-term business

Contracts of insurance, not included in classes 10 to 13 that the Commission determines constitute long-term insurance business.

SCHEDULE 2

FEES AND PENALTIES

1. Licence fees, annual fees and other fees

Nature of fee	Licence Type (if applicable)	Fee payable (New Zealand dollars unless otherwise stated)	
For the issuance of a licence, including application fee	Category A	\$3,000	
	Category B	\$3,000	
Annual fee, payable on or before each anniversary of the issuance of the licence	Category C Type	- Captive	\$US1,000
		- Reinsurance only	\$US1,000
		- All other	\$US3,000
	External Insurer (approved under section 11)	External Insurer (approved under section 11)	\$2,000
		Insurance Manager	\$250
		Intermediary	
	- Broker		\$1,000
		- Agent	\$1,000
		o Body corporate	\$200
		o Individual	\$200
Category A	Category A	\$3,000	
	Category B	\$3,000	
Category C Type	- Captive	\$US500	
	- Reinsurance only	\$US500	
	- All other	\$US1,000	
External Insurer (approved under section 11)	External Insurer (approved under section 11)	\$1,000	
	Insurance Manager	\$250	

	Intermediary - Broker - Agent	\$500
	o Body corporate o Individual	\$500 \$100
	Providing a certified copy of a document kept by the FSC in relation to an insurer	\$25
	Inspection of Registers in accordance with section 92	\$25
