

FINANCIAL SUPERVISORY COMMISSION



Cook Islands

PRUDENTIAL STATEMENT

No. 11.1-2009

ISSUED UNDER SECTION 98 OF THE *INSURANCE ACT 2008*

INSURANCE LICENSING

REQUIREMENTS, POLICIES AND PROCEDURES

Application for Companies Incorporated under the Companies Act or the International Companies Act

1. Preamble

This Prudential Statement is issued by the Financial Supervisory Commission (FSC) pursuant to Part 2 of the Insurance Act 2008 (Act) on “Regulation and Supervision of Insurance Business”. It applies to all proposals to establish new insurers where the applicant is seeking a Category A or C insurance licence. Applicants for a licence to conduct a branch operation in the Cook Islands should refer to Prudential Statement No 11.2-2008.

The Act provides that no person shall carry on insurance business of any kind in or from the Cook Islands without a licence or approval under the Act. Under Section 3(1) of the Act, “insurance business” is defined as the business of undertaking liability under 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, and includes life insurance business and reinsurance business.

Insurance business is divided into two types:

- (a) long-term business; and
- (b) general business

The purpose of this Prudential Statement is to:

- (i) provide for the standardization of written applications and minimum information requirements for the licensing of an insurer incorporated under the Companies Act or the International Companies Act, and
- (ii) promote transparency in licensing requirements not only within the Cook Islands but in the international financial community as well.

Insurance licensing is the first step towards effective insurance supervision because it determines the quality of insurers participating in the market. In deciding whether to grant a licence, the FSC reviews the application under five general headings.

- **Owners and prospective managers** (Are they “fit and proper” persons for their respective roles?)
- **Business plan** (Is it realistic and viable, and does it incorporate adequate capitalization for the insurer’s size and the nature of its proposed business?)
- **Location** (Will management and records be physically present in the Cook Islands?)
- **Systems and controls** (Are they adequate to ensure that it will carry on business in a prudent manner and also comply with the requirements of the Financial Transactions Reporting Act 2004?).
- **Compliance** (Will the applicant, if it receives a licence, be in compliance with the Insurance Act, Code and Regulations henceforth?)

Once an insurer is licensed, ongoing supervision is directed towards ensuring that the above criteria continue to be met.

The FSC’s policies and procedures outlined in this Statement are based on internationally accepted standards for the licensing and prudential supervision of insurers and are applied to licensees regardless of the nature and size of their operations.

This Prudential Statement shall be applied in conjunction with Part 2 of the Insurance Act 2008 and the Insurance Code.

2. Existing Licensees under the Off-shore Insurance Act

If a company held an off-shore insurance licence under the Off-shore Insurance Act as at 1 January 2009 it is deemed to have been granted a Category C licence under the Insurance Act 2008 at the date that Act commenced, that is 1 January 2009.

The FSC will issue a replacement licence to existing off-shore insurers.

An existing licensee that the FSC considers is not carrying on “insurance business” will not be issued with an insurance licence. It would not, therefore, be permitted to use the word “insurance”, “assurance” or “underwrite” in its name, description or title unless it applies for and is granted specific approval by the FSC under Section 88 of the Insurance Act.

3. Application Forms and Fees

In order to obtain a licence, applicants must complete and submit the following forms and supporting schedules and documentation:

- **Licence Application (FSC Form INL-1)** - to be completed by the applicant.
- **Personal Affidavit (FSC Form INL-2)** - to be completed by each individual who is or will be a significant shareholder, associate, director and/or officer of the applicant.
- **Corporate Declaration (FSC Form INL-3)** - to be completed by each person, other than individuals, who is or will be a significant shareholder/associate.
- **Confidential Financial Statement (FSC Form INL-4)** - to be completed by each person who is or will be a significant shareholder of applicant.

General Instructions are included in the Licence Application form and more specific instructions and notes in each section. The FSC may require the submission of additional information and documents should they be considered necessary.

The prescribed fee of \$3,000 (NZD for Category A and USD for Category C) must be paid when an application is filed. This fee represents the application fee and the licence fee for the first year.

4. Filing of Applications

- a) Applicants are required to file their applications in accordance with this Prudential Statement. The FSC will not accept an application other than in

- the prescribed form. Applicants should ensure that pertinent requirements are complete before an application is filed.
- b) Applications lacking specific documents that need to be obtained from government agencies, such as police clearances etc., will be accepted by the FSC provided there is evidence to support that a written request for such document has been made at least a month before the filing of the application. An application, however, will be considered complete only when all required documents are received by the FSC.
 - c) In terms of the Act, the FSC is required to either issue or refuse a licence or approval within 3 months of receiving a complete application and all subsequent documentation and information requested.
 - d) A general checklist of all documents for each prescribed form should accompany an application. All required forms and documents must be properly indexed following the sequence of the checklist.

5. Criteria for the Issue of a Licence

The FSC must determine whether an applicant satisfies the criteria for the issue of a licence under Section 10 of the Act. To this end, information provided by applicants will be evaluated, confirmed and investigated as may be necessary.

Full details must be provided with respect to the beneficial owners and persons controlling “mind and management” of an applicant. For the FSC, a critical element of the evaluation will be to ensure that all significant shareholders, directors, officers or managers are fit and proper persons for their respective roles.

The FSC must be satisfied that persons concerned possess:

- 1) Honesty, integrity and a good reputation. (Supporting evidence, including references, must be provided and may be the subject to further enquiry by the FSC.)
- 2) Competence and capability. (Information must be provided for each individual including full details of their background, qualifications and experience. This must include sufficient information to enable a judgment to be reached on their competence and capacity to adequately perform their specific role.)

For major shareholders, the FSC will require evidence that the persons concerned have adequate funds available to meet the issued and fully paid capital requirement (minimum \$200,000 for Category A in total but, on an on-going basis, funds not less than the greater of 75% of shareholders funds or the solvency requirements provided for in the Insurance Code) and

collectively have sufficient assets or access to capital to meet any additional capital projected to be required in the near term. Where it is not clear, the FSC may also seek evidence of the source of the capital being provided.

The FSC also requires applicants to submit a business plan. Appendix A sets out a sample business plan format, including pro forma statements and projections. Before issuing a licence, the FSC must be satisfied that the plan is comprehensive, realistic and viable. The detailed information requirements for this are set out in Appendix B.

Details are also required of the applicant's proposed internal systems and controls. Manuals and written guidelines must be submitted covering such items as underwriting, record keeping, accounting policies, public information disclosure policies, internal controls, corporate governance, policies and procedures to meet the requirements of the Financial Transactions Reporting Act 2004 and risk management policies and procedures. The latter must include policies and control procedures relating to underwriting and investment, as well as operational risks.

6. Commencing Business

If an insurer does not commence business within a reasonable period after obtaining a licence or ceases to carry on business for an unreasonable period, the FSC may revoke or suspend the insurer's licence.

A condition of any licence issued to a new insurer will be that they advise the FSC of their planned date to commence operations at least 30 days prior to the date of commencement. This is to enable the FSC to undertake an onsite inspection before or shortly after the opening date of a new insurer.

7. Ongoing Requirements

Applicants should note that all of the requirements that are referred to above and which form the major part of the licence application process are ongoing and will be the subject of regular examination and review by the FSC. New directors, officers and significant shareholders therefore have to comply with applicable forms and documentary requirements and the criteria for a licence. Likewise, the criteria for the issue of a licence under Section 10 of the Act must be satisfied on an ongoing basis. A standard condition of all licences is that any significant change must be reported immediately and proposed changes of ownership, directors, management and external auditor require prior FSC approval. Failure to meet these conditions may lead to suspension or revocation of an insurer's licence as well as, in some cases, prosecution.

8. This Prudential Statement takes effect from 1 January 2009.