

# FINANCIAL SUPERVISORY COMMISSION



Cook Islands

## PRUDENTIAL STATEMENT

No. 11.2-2009

ISSUED UNDER SECTION 98 OF THE *INSURANCE ACT 2008*

### INSURANCE LICENSING REQUIREMENTS, POLICIES AND PROCEDURES

#### Application for an External Insurer to carry on Insurance Business in the Cook Islands from a branch office in the Cook Islands

#### 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 proposals to establish an insurer where the applicant is seeking a category B licence. 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, constituted or formed outside the Cook Islands, and (ii) promote transparency in licensing requirements not only within the Cook Islands but in the international financial community as well.

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

A category B licence issued under the Act for an external insurer, that is one that is not incorporated in the Cook Islands, that wishes to carry on domestic insurance business from a branch office in the Cook Islands.

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 six general headings.

- **Owners**, where the applicant is owned by individual rather than corporate shareholders (Are they ‘fit and proper’ persons for their respective roles?)
- **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** (What physical presence will there be in the Cook Islands?)
- **Systems and controls** (Are they adequate to ensure that it will carry on business in a prudent manner and 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?)

The holder of a Category B licence will be required to hold an amount of capital in the Cook Islands. The amount will be determined on a case by case basis calculated in accordance with the amount of business being written, bearing in mind the minimum requirement for a Category A licence holder is \$200,000.

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. Application Requirements**

Section 2 of the Act defines an external insurer as an insurer constituted or formed outside the Cook Islands. The Act allows an external insurer to carry on insurance business in the Cook Islands in either of 2 ways.

- i. By being licensed as a Category B insurer that carries in business from a branch office operation in the Cook Islands
- ii. By being an approved external insurer under section 11(3) of the Act, which does not require the insurer to hold a licence.

This Prudential Statement applies to applicants for a Category B licence. Prudential Statement 11.3–2009 applies to an external insurer that wishes to operate in the Cook Islands as an authorized, but not as a licensed, insurer.

### **(a) Applicant Information Requirements**

- a certified copy of the incorporating instrument and memorandum and articles of association of the applicant;
- most recent copies of applicant's capital adequacy calculations;
- a copy of the most recent home jurisdiction supervisory on-site report of the applicant, where available, for release to FSC;
- current organizational chart of the entire corporate group;
- proposed classes of insurance to be provided in the Cook Islands;
- types of policies to be written.

### **(b) Home Jurisdiction Regulator Requirements:**

- confirmation of consent to the approval of the application;
- a certificate of good standing of the applicant (or similar document);
- confirmation that the applicant is authorized to transact and is transacting the classes of insurance it is proposing to transact in Cook Islands;

- copies of annual regulatory filings for the last 5 years in the form submitted to the insurance supervisory authorities in the home jurisdiction evidencing successful insurance operations and proven expertise in the proposed lines of business, audited financial statements and, if applicable, the most recent filings submitted to the securities regulator;

**(c) Other Requirements**

A comprehensive business plan for the Cook Islands, including a detailed description of the following:

- Management and personnel;
- appointment of auditor for the Cook Islands business, if required;
- outsourcing arrangements, if any;
- marketing and underwriting strategies;
- reinsurance arrangements and retention levels;
- 3 years of financial projections, showing assets, liabilities, premium income, investment income, general expenses, actuarial liabilities and compliance with FSC solvency requirements;
- marketing study demonstrating the product target market and anticipated volume of business;
- evidence that the senior officers of the proposed Cook Islands' branch are fit and proper;
- copies of the investment policies for the Cook Islands branch
- the applicant's policies for complying with anti money laundering and prevention of terrorist financing under the *Financial Transactions Reporting Act 2004*.

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.

### **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.

The prescribed fee of \$3,000 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 an 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. Ongoing Requirements**

Applicants should note that virtually 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.

**6. This Prudential Statement takes effect from 1 January 2009.**

**FINANCIAL SUPERVISORY COMMISSION**

**Note** The financial statement filing requirements and solvency testing would be the same for licensed branches as for domestic companies, with appropriate modifications to reflect the fact that branches have no capital, but rather that capital is held by 'head office'..