



# Captive Insurance (Commencement) Order 2013

Sir Frederick Goodwin, KBE

*Frederick Goodwin KBE*  
Queen's Representative

## Order in Executive Council

At Avarua, Rarotonga this

*25th*

day of

*June*

2013

Present:

### His Excellency the Queen's Representative in Executive Council

Pursuant to section 2 of the Captive Insurance Act 2013, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following order—

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#### Order

- 1 **Title**  
This order is the Captive Insurance (Commencement) Order 2013.
- 2 **Commencement**  
The Captive Insurance Act 2013 is deemed to have come into force on 11 June 2013.

*[Signature]*  
Clerk of the Executive Council

This order is administered by the Financial Supervisory Commission.  
This order is made on the *25th* day of *June* 2013.



# Captive Insurance Regulations 2013

Sir Frederick Goodwin, KBE

  
Queen's Representative

## Order in Executive Council

At Avarua, Rarotonga this

25<sup>th</sup>

day of



2013

Present:

### His Excellency the Queen's Representative in Executive Council

Pursuant to section 43 of the Captive Insurance Act 2013, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following regulations—

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## Regulations

### Part 1

#### Preliminary

- 1 Title**  
These regulations are the Captive Insurance Regulations 2013.
- 2 Commencement**  
These regulations come into force on the day after the date on which they are made.
- 3 Application of Regulations**  
These regulations apply only to holders of a licence issued under the Act which are companies incorporated under the Companies Act 1970-71 or International Companies Act 1981-82.
- 4 Definitions**
- (1) In these regulations, unless the context otherwise requires,—  
**Act** means the Captive Insurance Act 2013  
**admissible asset** means an asset specified in Schedule 1 as an admissible asset  
**board** in relation to a company, means the board of directors, committee of management, council or other governing authority of the company  
**capital resources**, in relation to a licensed captive insurer, means the aggregate of the insurer's admissible assets  
**financial year** has the meaning specified in regulation 11.
- (2) Except as provided in subsection (1), any word or term that is defined in the Act has the same meaning in these regulations.

### Part 2

#### Provisions Applicable To Licensed Captive Insurers

##### *Financial Resource Requirements*

- 5 Minimum capital and surplus requirement**
- (1) The prescribed minimum capital and surplus requirement for a licensed captive insurer is \$100,000.

## **Captive Insurance Regulations 2013**

- (2) In determining the surplus of a licensed captive 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 regulation 7; and
  - (c) the insurer's assets must be valued in accordance with regulation 6.
- (3) A licensed captive insurer must maintain adequate systems and controls to monitor, assess and document its compliance with this paragraph on an ongoing basis.

### **6 Valuation of assets**

- (1) Subject to subsection (2), a licensed captive insurer must 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 must any asset of a licensed captive insurer be valued in an amount higher than the market value of that asset.

### **7 Calculation of liabilities**

- (1) A licensed captive insurer must 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.

## *Corporate Governance*

### **8 Risk Management**

- (1) A licensed captive insurer must 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 must—
  - (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 captive 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 must be fully and clearly documented and effectively communicated and readily available to the directors and to those staff and other functionaries of the licensed captive insurer who have responsibility for implementing them.
- (4) The board of a licensed captive insurer has responsibility for—

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- (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 licensed captive insurer's risk management strategy, policies, systems and controls.
- (5) Without limiting this paragraph, the risk management systems and controls of a licensed captive insurer must—
- (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 the board.

### Part 3

#### Miscellaneous Provisions

##### **9 Application for licence**

- (1) An application for a licence under the Act must—
- (a) be in the form;
  - (b) contain the information;
  - (c) be accompanied by the documents;
  - (d) be accompanied by the prescribed fees; and
  - (e) be made in accordance with any instructions,—  
specified by the Commission from time to time.
- (2) Without limiting subsection (1), an application for a licence must include a current business plan for the licensed captive insurer.
- (3) The Commission will make a determination on the application for licence within 60 days from the date of receipt of the application.

##### **10 Fees and penalties**

For the purposes of section 42 of the Act, the fees and penalties payable to the Commission are specified in Schedule 2.

#### *Accounting Records, Financial Statements and Audit*

##### **11 Meaning of financial year**

- (1) Subject to subsection (3), for the purposes of the Act and these regulations, the financial year of a licensed captive insurer 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

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- (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) Subsection (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 licensed captive insurer or of its own volition, may allow that the financial year of the insurer must be—
  - (a) where the insurer is part of a group of companies, the financial year or period used for the group financial statements; or
  - (b) in any other case, any date the captive chooses.

### 12 Preparation of financial statements

- (1) In the Act and these regulations, financial statements in relation to a licensed captive insurer and to a financial year, means—
  - (a) a statement of the financial position of the insurer as at the last date of the financial year:
  - (b) a statement of the financial performance of the insurer in relation to the financial year:
  - (c) a statement of cash flows for the insurer in relation to the financial year:
  - (d) a statement of solvency showing the amount of the insurer's surplus as at the last date of the financial year:
  - (e) such statement relating to the prospects for the insurer's business as may be required or specified by the accounting standards in accordance with which the insurer'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 insurer'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 an insurer appoints an actuary, the statement of solvency must be endorsed by the insurer's actuary following the completion of the actuary's actuarial investigation.
- (3) A licensed captive insurer must 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.

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- (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 subsection (1) must be—
  - (a) approved by the directors of the insurer; and
  - (b) following approval under paragraph (a), signed by at least one director on behalf of all the directors who must state the date when the financial statements were approved by the directors and the date when the director signs the financial statements.

### 13 Audit and auditor's report

- (1) The auditor of a licensed captive insurer must—
  - (a) audit the insurer's financial statements and report to the insurer in accordance with—
    - (i) the auditing standards specified by the recognised professional body of which the auditor is a member; or
    - (ii) such other recognised international auditing standards as may be approved by the Commission; and
  - (b) certify the insurer's compliance with such obligations and matters as may be specified in the Act or these regulations;
  - (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the insurer and the auditor; and
  - (d) carry out such other duties as may be required of the auditor by the Act or these regulations.
- (2) Without limiting subsection (1), an auditor's report—
  - (a) must 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 regulation 12(1); and
    - (iii) are in accordance with the provisions of the Act and these regulations; and
  - (b) must make specific reference to any transaction, other than a transaction in the normal course of the licensed captive insurer's business, which, in the auditor's opinion, results in the statement of the financial position of the insurer 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 insurer has not complied with its obligations under the Act and these regulations with respect to the keeping of accounting records;
  - (b) the financial statements are not in agreement with the insurer's accounting records; or
  - (c) the auditor has not received all the information and explanations which the auditor considers necessary to carry out the audit,—the auditor must include a statement to that effect in the audit report.

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### **14 Submission of financial statements to Commission**

- (1) The financial statements signed by a director in accordance with regulation 12 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 other reports that the licensed captive insurer considers necessary.
- (2) Unless the financial statements are accompanied by the documents specified in subsection (1), the Commission will consider that they have not been submitted to it.

### **15 Amendment of financial statements**

- (1) If the Commission considers that any document submitted by a licensed captive insurer under regulation 14 is inaccurate or incomplete or is not prepared in accordance with the Act or these regulations, it may by written notice require the insurer to amend the document or to submit a replacement document.
- (2) If an insurer fails to comply with a notice under subclause (1), the Commission may reject the document.
- (3) A document amended by an insurer is treated as having been submitted in its amended form.

## *Prudential Statements*

### **16 Prudential Statements**

- (1) The Commission may issue written prudential statements providing for the prudential supervision of the captive insurance business of—
  - (a) all licensees; or
  - (b) a specified class or classes of licensees,—  
specifying the manner in which an act must be done if—
    - (c) an act is required or permitted to be done under the Act; and
    - (d) no form is prescribed or procedure is laid down for that act in the Act or these regulations; or
    - (e) providing for any other matters contemplated by the Act, necessary for its full administration, or necessary for giving it full effect.
- (2) All prudential statements issued by the Commission must be published and maintained on the Commission's public website.
- (3) An act done in accordance with a prudential statement is valid.



**Schedule 1**  
**Admissible Assets**

*Admissible Assets*

1. The following assets are admissible assets—
  - (a) investments in and advances to the licensed captive insurer's holding company subject to the insurer earning a market interest rate;
  - (b) cash in hand or on deposit with a financial institution approved by the Commission;
  - (c) an irrevocable letter of credit issued by financial institutions approved by the Commission;
  - (d) bonds and debentures guaranteed by a Government approved by the Commission;
  - (e) securities quoted on a stock exchange approved by the Commission, but not exceeding seventy percent of the quoted market value;
  - (f) premiums receivable;
  - (g) reinsurance balances receivable;
  - (h) accounts receivable net of provision for bad or doubtful debts.
  
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 licensed captive insurer, represents its fair value determined in accordance with generally accepted accounting standards.

**Schedule 2**  
**Fees and Charges Payable to the Commission**

Licensee	Amount Payable
Licensed Captive Insurer	Application fee: \$1,000.00
	Licensee fee: \$3,000.00
	Annual Renewal fee: \$3,000.00
External Insurance Manager	Application fee: \$300.00
	Licensee fee: \$300.00
	Renewal fee: \$300.00

Annual renewal fees are payable on 1 July. Licence fees due in the first year for the licensee will be paid on a pro rata basis up to 30 June and thereafter paid in full on 1 July.

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**Clerk of the Executive Council**

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These regulations are administered by the Financial Supervisory Commission.  
These regulations were made on the 25<sup>th</sup> day of June 2013.