

Hon. Mark Brown



Captive Insurance Bill 2013

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Transitional Provisions

An Act to provide for the licensing, regulation and supervision of captive insurance business conducted by international companies incorporated in the Cook Islands, and certain captive insurance business conducted within the Cook Islands.

The Parliament of the Cook Islands enacts as follows—

Part 1

Preliminary

1 Title

This Act is the Captive Insurance Act 2013.

2 Commencement

This Act comes into force on a date to be appointed by the Queen's Representative, by Order in Executive Council.

3 Interpretation

(1) In this Act, unless the context otherwise requires—

accounting records includes books, vouchers, invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and such working papers and other documents as are necessary to explain the methods and calculations by which financial statements are made up and such other documents as may be prescribed

affiliate means a body forming part of a group

approved form means a form approved by the Commission under section 44

approved insurance manager means an insurance manager approved in accordance with section 17

association means any individuals, corporations, limited liability companies, partnerships, associations, or other entities who, individually or collectively whether or not in conjunction with some or all of the member organisations, own, control, or hold with power to vote all of the voting shares of a captive insurance business

capital in relation to a company, means its fully paid-up share capital

captive insurance business means the business of a company insuring interests in its holding company or in companies that it is affiliated or associated with or is organised within a group or agency relationship

commencement date means the date upon which this Act comes into force

Commission means the Financial Supervisory Commission established under the Financial Supervisory Commission Act 2003

Companies Act means the Companies Act 1955 of New Zealand as applied to the Cook Islands by the Companies Act 1970-71

company means a Cook Islands company as defined in this Act

connected person has the meaning specified in the regulations

Cook Islands company means an international company incorporated and registered under the International Companies Act 1981-82 of the Cook Islands, or a company incorporated under the Companies Act to only underwrite the interests of its holding company which is also incorporated under the Companies Act

Court means the High Court of the Cook Islands

director has the meaning specified in section 5

document means a document in any form and includes—

- (a) any writing or printing on any material:
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form:
- (c) any storage medium, including discs and tapes:
- (d) books and drawings; and

- (e) photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced

and without limiting the generality of paragraphs (a) to (d), includes any application to or order of a court or tribunal, any other legal process and any notice

dollar or \$, unless expressly provided otherwise, means the New Zealand dollar
external insurance manager means an insurance manager not normally resident in the Cook Islands

financial year in relation to financial statements, has the meaning specified in the regulations

group means a group of entities—

- (a) that consist of a participating company, its subsidiaries and any entities in which its subsidiaries hold a participation, or that hold a participation in the participating company or its subsidiaries; or
- (b) that is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those entities

holding company has the meaning given to it in the Companies Act 1970-1 specified in the regulations

insurance business means captive insurance business

insurance manager means a person who provides insurance expertise to any insurer of which the manager is not an employee or who exercises such other functions with respect to insurers as may be specified in the regulations

insurer means a company carrying on captive insurance business

insurer's licence means a licence issued under section 8

International Companies Act means the International Companies Act 1981-82

Insurance Act means the Insurance Act 2008

licensee means a company holding a license issued under this Act

licensed captive insurer means a licensee

Minister means the Minister responsible for Finance

participating company means a company that is a holding company, or a company that holds a participation in another company, or a company that is linked to a related company in such a manner as may be prescribed in the regulations

participation means the holding, directly or indirectly, of 20 percent or more of the voting rights or capital of a company

person includes a partnership

prescribed means prescribed by regulations

registers means the registers required to be maintained by the Commission under section 39

regulations means the regulations made under section 43

related company, in relation to another company, means a subsidiary of that other company, or a company in which the other company holds a participation, or a company that is linked to the other company in such a manner as may be prescribed in regulations

significant interest, in respect of a company, means a holding or interest in the company or in any holding company of the company held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly—

- (a) to control 10 percent or more of the voting rights of that company at a meeting of the company, or its members:
- (b) to a share of 10 percent or more in dividends declared and paid by the licensee:
- (c) to a share of 10 percent or more in any distribution of the surplus assets of the company; or
- (d) to appoint or remove one or more directors of the company

surplus means the amount of which a company's assets exceeds its liabilities, as defined in the Act and regulations

unlicensed insurer means a company which carries on captive insurance business without a licence or without the benefit of an exemption with respect to that business.

- (2) Unless the context otherwise requires—
 - (a) a reference to **this Act** includes a reference to the regulations:
 - (b) a reference to the Insurance Act 2008 of the Cook Islands, includes regulations made under that Act, and the Insurance Code 2010; and
 - (c) unless otherwise defined herein, terms in this Act shall have the definitions assigned to them in the International Companies Act.

4 Application

- (1) This Act applies only to—
 - (a) companies incorporated under the International Companies Act that are engaged in captive insurance business outside of the Cook Islands, as defined in this Act; and
 - (b) companies incorporated under the Companies Act to engage in insuring the interests of their holding companies only, with the holding companies also being incorporated under the Companies Act.
- (2) The Insurance Act shall apply to insurance business other than captive insurance business in or from within the Cook Islands to which this Act applies.

5 Meaning of director

- (1) For the purposes of this Act, **director**, in relation to a company means—
 - (a) a person occupying or acting in the position of director by whatever name called and any person held out by the company to be a director; and
 - (b) a person in accordance with whose directions or instructions a director or the board of directors of a company may be required or is accustomed to act.
- (2) Notwithstanding subsection (1)—

- (a) a person is not to be regarded as a director of a company by reason only that a director or the board of directors act on advice given by the person in a professional capacity; and
- (b) a person acting as receiver or liquidator in relation to a company is not to be regarded as a director of the company by virtue of the person acting in that capacity.

Part 2

Regulation and Supervision of Captive Insurance Business

Unlicensed Captive Insurance Business

6 Prohibition on unlicensed insurance business

No Cook Islands company may carry on, or hold itself out as carrying on, captive insurance business unless it obtains a licence to do so issued by the Commission under this Act.

7 Application for licence

- (1) An application for a licence under this Act must be made to the Commission through a trustee company in the Cook Islands or through an approved insurance manager.
- (2) An application under subsection (1) must be in the approved form and shall be accompanied by such documentation, information and fees as may be prescribed.

8 Issuance of licence

- (1) Subject to subsection (2), the Commission may issue a licence to an applicant under section 7 if it is satisfied that—
 - (a) the applicant intends, if issued with a licence, to carry on the relevant captive insurance business;
 - (b) the applicant satisfies the requirements of this Act with respect to the application;
 - (c) the applicant will, on the issuance of the licence, be in compliance with this Act, including the capital and surplus requirement specified in section 12;
 - (d) the applicant, its directors, and any persons having a significant interest in the applicant are fit and proper persons to act as such;
 - (e) the organisation, management and financial resources of the applicant are adequate for the carrying on of the relevant insurance business;
 - (f) the relevant insurance business will be conducted in accordance with sound insurance principles; and
 - (g) issuing the licence is not against the public interest and would not be detrimental to the reputation of the Cook Islands.
- (2) For the purposes of subsection (1), **relevant captive insurance business** means the captive insurance business that the applicant will be authorised to carry on if a licence is issued to it.

9 Form of licence and approval

- (1) The Commission must, in relation to every application under this Act—
 - (a) issue the licence;
 - (b) issue the licence, subject to conditions; or
 - (c) refuse the application.
- (2) Subject to the provisions under section 29 of this Act the licence shall remain valid until it is revoked by the Commission.
- (3) The Commission must give to the person concerned written notice of a decision under subsection (1) and, where the decision is under paragraphs (b) or (c), a written statement of the reason for that decision.
- (4) If the holder of a licence is in contravention of any condition imposed, the Commission may undertake action for a breach.
- (5) The licence remains the property of the Commission at all times.
- (6) The Commission must determine an application made under section 7 within the time prescribed by regulation.

10 Conditions

- (1) In this section, **condition** means a condition subject to which a licence is issued or an approval is granted by the Commission and includes a condition as varied in accordance with this section.
- (2) If a licence is issued or an approval granted subject to one or more conditions—
 - (a) the Commission must together with the licence or approval issue a written notice to the applicant specifying the condition or conditions; and
 - (b) if in respect of any conditions it considers that it is in the public interest to do so the Commission may make public those conditions of the licence or approval.
- (3) The Commission may upon giving reasonable written notice to a licensed captive insurer—
 - (a) at any time vary or revoke any condition; or
 - (b) impose new conditions on the licence or approval.
- (4) A licensed captive insurer may apply to the Commission in writing for a licence condition to be revoked or varied and, if the Commission is satisfied that the licence condition is no longer necessary or should be varied, it may revoke or vary the condition.
- (5) Where the Commission revokes or varies a condition or imposes a new licence condition, the licensed captive insurer must, if requested to do so by the Commission, deliver its licence or approval to the Commission for re-issue.
- (6) Where the Commission imposes a condition on a licence or approval, it may publish the condition in such manner as it considers appropriate.

Financial Resource Requirements

11 Maintenance of financially sound condition

- (1) A licensed captive insurer must, at all times, maintain its business in a financially sound condition by—

- (a) having assets;
 - (b) providing for its liabilities; and
 - (c) generally conducting its business,—
- so as to be in a position to meet its liabilities at all times.
- (2) If a licensed captive insurer forms the opinion that it does not comply with subsection (1), it shall forthwith notify the Commission in writing.
 - (3) A licensed captive insurer that contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$20,000.
 - (4) Section 12 does not limit the generality of this section.

12 Maintenance of capital and surplus

- (1) A licensed captive insurer must ensure that its capital and surplus are maintained in an amount not less than the higher of—
 - (a) the prescribed minimum amount ; or
 - (b) such amount as the Commission may direct under subsection (2).
- (2) If, having regard to the nature and extent of the insurance business carried on by a licensed insurer, it considers it appropriate, the Commission may direct the insurer to increase its capital and surplus to an amount higher than the prescribed minimum required under subparagraph (a) applicable to the insurer.
- (3) If, having regard to the nature and extent of the insurance business carried on by a licensed captive insurer, it considers it appropriate, the Commission may allow the capital and surplus of the insurer to be an amount below the prescribed minimum applicable to the insurer, but subject to the Commission being able to direct the insurer to increase its capital and surplus at any time.
- (4) A direction issued under subsection (2) or (3) must specify a reasonable time period for compliance with the direction.
- (5) If the capital of a licensed captive insurer falls below the amount that it is required to maintain under subsection (1), (2) or (3), it shall forthwith notify the Commission in writing.
- (6) A licensed captive insurer that contravenes subsection (5) commits an offence and is liable on conviction to a fine not exceeding \$20,000.

13 Reinsurance

- (1) A licensed captive insurer must have such arrangements as it considers appropriate for the reinsurance of liabilities in respect of risks insured by the licensee in the course of its business as an insurer.
- (2) A licensed captive insurer that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$20,000.

Obligations of and Restrictions or Conditions on Licensed Captive Insurers

14 Limitations on business to be carried on by licensed captive insurer

- (1) Subject to subsection (2), a licensed captive insurer must not carry on any business other than the captive insurance business for which it has obtained a licence under this Act.

- (2) Subsection (1) does not apply to any business or activities incidental to or in connection with or for the purposes of the insurance business of a licensed captive insurer.
- (3) A licensed captive insurer must carry on its business substantially in accordance with the most recent business plan submitted to the Commission.
- (4) A licensed captive insurer may, at any time, submit an amended business plan with the Commission.

15 Appointment and termination of directors

- (1) The persons with the power to appoint a director to a licensed captive insurer must not do so without written approval of the Commission and until such approval is obtained any such appointment must be of no effect.
- (2) The Commission must not grant an approval under subsection (1) unless it is satisfied that the person concerned is a fit and proper person to be a director of the licensed captive insurer.
- (3) Where a licensed captive insurer terminates the appointment of a director or a director ceases to hold office, or be employed by the insurer, the licensed captive insurer must, within 14 days thereof, submit written notification to the Commission.
- (4) A licensed captive insurer must at all times have at least two directors, and at least one director must be a natural person residing in the Cook Islands.
- (5) A licensed captive insurer that contravenes subsections (1), (3) or (4) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

16 Disposing of or acquiring significant interest in licensed captive insurer

- (1) A person owning or holding a significant interest in a licensed captive insurer must not sell, transfer, charge or otherwise dispose of the person's interest in the insurer, or any part of the person's interest, unless the prior written approval of the Commission has been obtained.
- (2) A person must not, whether directly or indirectly, acquire a significant interest in a licensed captive insurer unless the prior written approval of the Commission has been obtained.
- (3) A licensed captive insurer must not, unless the prior written approval of the Commission has been obtained—
 - (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (1):
 - (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in—
 - (i) a person acquiring a significant interest in the insurer; or
 - (ii) a person who already owns or holds a significant interest in the insurer, increasing or decreasing the size that person's interest.
- (4) An application to the Commission for approval under subsection (1), (2) or (3) must be made by the licensed captive insurer.
- (5) The Commission may exempt from subsection (1) to (4) above a licensed captive insurer whose shares or the shares of whose holding company, if any, are publicly traded on a stock exchange recognised by the Commission, and any such exemption—

- (a) must be subject to a condition that the licensed captive insurer must, as soon as reasonably practicable, notify the Commission of—
 - (i) any change in control of the insurer; or
 - (ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the insurer's issued share capital or total voting rights.
 - (b) must be subject to a condition that the insurer must, as soon as reasonably practicable, provide such information to the Commission, and within such period of time, as the Commission may require for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensee in the circumstances set out in subsection (a) above are fit and proper persons to have such control or ownership.
- (6) The Commission must not grant approval under subsection (1), (2) or (3) unless it is satisfied that following the acquisition or disposal—
- (a) the licensed insurer will continue to meet the criteria for licensing specified in section 8(1); and
 - (b) any person who will acquire a significant interest satisfies the Commission that they are fit and proper to do so.
- (7) A person who knowingly contravenes subsection (1) or (2) or a licensed insurer that contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

17 Appointment of approved insurance manager

- (1) A licensed captive insurer must appoint and at all times have an approved insurance manager.
- (2) An approved insurance manager must be an insurance manager licensed under the Insurance Act, or an external insurance manager approved under this Act.
- (3) The Commission may approve an external insurance manager for the purposes of subsection (2) where it is satisfied that—
 - (a) the external insurance manager has the necessary expertise and personnel to effectively carry on the role of insurance manager; and
 - (b) the external insurance manager has paid to the Commission the prescribed application, licence or renewal fees, as applicable.
- (4) The Commission's approval under subsection (3) must be reviewed on an annual basis, and the Commission may refuse to renew its approval if it is no longer satisfied that the external insurance manager meets the criteria in subsection (3).

- (5) The Commission may require the external insurance manager to complete an approved form containing the information in subsection (3), to enable the Commission to consider whether to provide its approval to the external insurance manager engaging in insurance management business in the Cook Islands.
- (6) A licensed captive insurer must not terminate the appointment of its approved insurance manager, and an insurance manager must not terminate its agreement to act as approved insurance manager for such a licensed captive insurer, unless the insurer or the approved insurance manager, as the case may be, has given not less than thirty days' notice of its intention to do so to the Commission.
- (7) The Commission may, on the application of the insurer or approved insurance manager, agree to accept a shorter period of notice than that specified in subsection (6).
- (8) A licensed captive insurer to which subsection applies must within fourteen days after—
 - (a) it appoints an approved insurance manager; or
 - (b) the appointment of its approved insurance manager is for whichever reason, terminated,—provide written notice of that fact to the Commission.
- (9) Where, for whatever reason, a person ceases to be the approved insurance manager of a licensed captive insurer, the insurer does not commit an offence under subsection (6) if it appoints another approved insurance manager in accordance with this section within fourteen days of the date that the previously appointed insurance manager ceases to hold that appointment.
- (10) Subject to subsection (7), a licensed captive insurer that contravenes subsection (1), (2), (6), or (8) or an approved insurance manager that contravenes subsection (6) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Part 3

Financial Records and Audit

18 Requirements with respect to records

- (1) A licensed captive insurer must keep at such address as the directors of the licensed captive insurer may determine, records that are sufficient—
 - (a) to show and explain its transactions;
 - (b) at any time, to enable its financial position to be determined with reasonable accuracy;
 - (c) to enable it to prepare such financial statements and make such returns as it is required to prepare and make under this Act; and
 - (d) wherever applicable, to enable its financial statements to be audited in accordance with this Act.
- (2) If the records required to be maintained under subsection (1) must be retained by the licensed captive insurer outside the Cook Islands, the licensed captive insurer must provide its trustee company and approved insurance manager with the physical address where these records are located.

- (3) The resident director must at all times be able to access records required to be maintained under subsection (1).
- (4) Records maintained outside of the Cook Islands must be made available in the Cook Islands not more than 14 days from the date the request was made or by date required in a Court Order.
- (5) The records required to be maintained under subsection (1) must be retained by the licensed captive insurer for a period of at least six years after the completion of the transaction to which they relate and this obligation continues notwithstanding that insurer ceases to be a licensed captive insurer.
- (6) A licensee, or former licensee, that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$10,000.

19 Licensed captive insurer to appoint auditor

- (1) A licensed captive insurer must appoint and at all times have an auditor for the purposes of auditing its financial statements.
- (2) An auditor must not be appointed under subsection (1) unless—
 - (a) the auditor consents in writing to the appointment; and
 - (b) the Commission has given its approval in writing to the auditor's appointment.
- (3) The Commission must not approve the appointment of an auditor under subsection (2)(b) unless it is satisfied that the auditor—
 - (a) has sufficient experience and is competent to audit the financial statements of the licensed captive insurer; and
 - (b) is independent of the licensed captive insurer.
- (4) A licensed captive insurer must, within 14 days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.
- (5) A licensed captive insurer must make such arrangements as are necessary to enable its auditor to audit its financial statements in accordance with this Act, including—
 - (a) by giving the auditor a right of access at all reasonable times to its accounting records and to all other documents and records; and
 - (b) by providing the auditor with such information and explanations, as, in either case, the auditor reasonably requires for the purposes of the audit.
- (6) The approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the relevant licensed captive insurer in accordance with this section in the previous financial year.
- (7) A licensed captive insurer that—
 - (a) subject to subsection (8), does not have an auditor; or
 - (b) contravenes subsection (2),—commits an offence and is liable on conviction to a fine not exceeding \$10,000.

- (8) Where, for whatever reason, a person ceases to be the auditor of a licensed captive insurer, the insurer does not commit an offence under subsection (1) if it appoints another auditor in accordance with this section within twenty eight days of the date that person who was previously appointed auditor ceases to hold that appointment.

20 Audit and audit report

- (1) An auditor must carry out sufficient investigation to enable the auditor to form an opinion on the financial statements, and prepare an audit report in compliance with the regulations. Upon completion of their audit of the financial statements of a relevant licensed captive insurer, the auditor must comply with the regulations.
- (2) The Commission may at any time, by notice in writing, direct a licensed captive insurer to supply the Commission with a report, prepared by its auditor or such other person as may be nominated by the Commission, at the expense of the licensee, on such matters as the Commission may determine which may include an opinion on the adequacy of the accounting and control systems, and on asset quality and the adequacy of provision for losses, of the licensed captive insurer.
- (3) A report prepared under subsection (1) or (2) must be at the cost of the licensed captive insurer.
- (4) Where the appointment of an auditor of a licensed captive insurer is terminated, the auditor whose appointment has been terminated must—
- (a) forthwith inform the Commission of the termination of their appointment and disclose to the Commission the circumstances that gave rise to such termination; and
 - (b) if, but for the termination of the auditor's appointment, the auditor would have reported information to the Commission under subsection (1), the auditor must report the information concerned to the Commission, as if the auditor's appointment had not been terminated.
- (5) The Commission may require an auditor of a licensed captive insurer to discuss any audit they have conducted or commenced with, or provide additional information regarding the audit to, the Commission.
- (6) Where, in good faith, an auditor or former auditor provides any information to the Commission to comply with this Act the auditor is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which the auditor is subject and no civil, criminal or disciplinary proceedings shall lie against the auditor in respect thereof.
- (7) The failure, in good faith, of an auditor or former auditor to provide a report or any information to the Commission under subsection (1), (2), or (4) does not confer upon any other person a right of action against the auditor which, but for that failure, the person would not have had.
- (8) An auditor or former auditor who contravenes subsection (1), (2), or (4) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

21 Powers of Commission re appointment of auditor

- (1) Where the Commission is satisfied that the auditor of a licensed captive insurer has failed to fulfil their obligations under this Act or is otherwise not a fit and proper person to act as the auditor of an insurer, it may, by written notice to the

insurer, revoke the approval of the appointment of the auditor and the insurer must appoint a new auditor in accordance with section 19.

- (2) A notice revoking the appointment of an auditor under subsection (1) must be given to the auditor.
- (3) If a licensed captive insurer fails to appoint an auditor, the Commission may appoint a qualified person to act as the auditor of the insurer.
- (4) An auditor appointed under subsection (3) is deemed for the purposes of this Act to have been appointed by the insurer.

22 Accounts and audit provisions of the International Companies Act or Companies Act

Except to the extent that this Act or the regulations provide otherwise, sections 18 to 21 do not limit the application of the provisions of the International Companies Act or Companies Act relating to accounts and audit to a licensed captive insurer that is subject to either Act, but in the event of any conflict between the provisions of this Act and either of the other Acts as applicable, this Act prevails.

23 Filing of returns and reporting of information to Commission

- (1) A licensed captive insurer must report to the Commission such information, or file with the Commission such returns or documents, as may be prescribed by the regulations within such time and verified in such form and manner as may be prescribed.
- (2) If the Commission considers that any document furnished by a licensed captive insurer under subsection (1) is inaccurate or incomplete, or is not prepared in accordance with this Act or the regulations, it may by written notice require the insurer to amend the document or to submit a replacement document.
- (3) A licensed captive insurer that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact, commits an offence and is liable on conviction to a fine not exceeding \$20,000.

Part 4 General Supervision and Enforcement

24 Compliance visits

- (1) This section applies to—
 - (a) Any person who appears to be carrying on captive insurance business;
 - (b) a licensed captive insurer; and
 - (c) a subsidiary or holding company of a licensed captive insurer.
- (2) The Commission may, for the purpose of enforcing this Act, in respect of any person who appears to be carrying on captive insurance business, whether or not a licensee—
 - (a) inspect the books, accounts and documents and investigate its transactions;
 - (b) inspect the premises and the business including the procedures, systems and controls, of a person to whom this section applies:

- (c) inspect the assets, including cash, belonging to or in the possession or control of a person to whom this section applies:
 - (d) examine and make copies of documents belonging to or in the possession or control of a person to whom this section applies being documents that, in the opinion of the Commission, relate to the carrying on of captive insurance business by that person:
 - (e) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system:
 - (f) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying:
 - (g) use or cause to be used any copying equipment in the premises to make copies of any record; and
 - (h) seek information and explanations from the directors, employees, agents and representatives of a person to whom this section applies, whether verbally or in writing, and whether in preparation for, during or after a compliance visit.
- (3) The Commission may take possession of all such books, accounts and documents inspected under subparagraph (2) as, and for so long as, may be necessary to complete its inspection as per subparagraph (1).
- (4) A licensed captive insurer to whom this section applies shall permit any employee of the Commission or person appointed by the Commission for the purpose to have access during such hours as are reasonable in the circumstances to any of its business premises to enable that person to undertake a compliance visit.
- (5) Any person who wilfully obstructs or hinders or fails to co-operate with the Commission or any authorised person in the lawful exercise of the powers under this section commits an offence and is liable on conviction—
- (i) if the person is an individual, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years, or both; or
 - (j) in any other case, to a fine not exceeding \$20,000.

25 Participation of foreign regulatory authority

- (1) Subject to subsection (2), the Commission may, upon the request of a foreign regulatory authority, permit that authority to take part in a compliance visit undertaken by the Commission under section 24.
- (2) The Commission must not permit a foreign regulatory authority to take part in a compliance inspection under section 24 unless it is of the opinion that the participation of the foreign regulatory authority is reasonably required—
- (a) for the effective supervision of the licensed captive insurer; or
 - (b) for the purposes of the regulatory or supervisory functions of the foreign regulatory authority.
- (3) In deciding whether or not to permit a foreign regulatory authority to take part in a compliance visit under this section, the Commission may take into account, in particular, whether the foreign regulatory authority is subject to adequate legal restrictions on further disclosure and, in particular, whether it is likely, without the written permission of the Commission—

- (a) to disclose information obtained or documents examined or obtained during the compliance inspection to any person other than an officer or employee of the authority engaged in prudential supervision; or
 - (b) to take any action on information obtained or documents examined or obtained during the compliance inspection.
- (4) For the purposes of this section, **foreign regulatory authority** means an authority in a country or territory outside the Cook Islands which exercises—
- (a) a function corresponding or similar to a function exercised by the Commission; or
 - (b) a function that, in the opinion of the Commission, relates to the supervision or regulation of any business or activity required to be licensed under this Act.

26 Enforcement action

- (1) The Commission may take enforcement action against a licensed captive insurer if—
- (a) in the opinion of the Commission, the licensee—
 - (i) has contravened or is in contravention of this Act or the regulations;
 - (ii) is or is likely to become insolvent;
 - (iii) is in breach of any condition of its licence;
 - (iv) has provided the Commission with any false, inaccurate or misleading information, whether on making application for a licence or subsequent to the issue of the licence; or
 - (v) is no longer fit and proper to hold a licence under this Act.
 - (b) the licensee—
 - (i) is compulsorily wound up;
 - (ii) has passed a resolution for voluntary winding up; or
 - (iii) is dissolved.
 - (c) a receiver and/or manager has been appointed in respect of the business carried on by the insurer;
 - (d) possession has been taken of any of the insurer's property by or on behalf of the holder of a debenture secured by a registered charge;
 - (e) a director, officer or person with an interest (whether legal or equitable) in the insurer no longer satisfies the Commission's fit and proper criteria;
 - (f) the Commission is entitled to take enforcement action under a provision in another Act.
- (2) For the purposes of subsection (1)(a)(ii), a licensed captive insurer is deemed to be insolvent if the total value of its assets does not exceed the total amount of its liabilities.
- (3) If the Commission is entitled to take enforcement action under subsection (1) it may exercise one or more of the following powers—
- (a) revoke the licensed captive insurer's licence under section 27;
 - (b) issue a directive under section 29; or
 - (c) appoint an examiner to conduct an investigation under section 30; or

- (d) petition the Court for the winding up of the licensee under section 219 of the Companies Act or section 158 of the International Companies Act, as applicable.

27 Revocation of licence

- (1) The Commission may at any time revoke a licensed captive insurer's licence if—
 - (a) it is entitled to take enforcement action against the insurer under section 26;
 - (b) the licensee has, within a period of 12 months or such time as the Commission may prescribe but not less than 6 months, failed to commence or has ceased to carry on the business for which it was licensed; or
 - (c) the licensee makes written application to the Commission for its licence to be revoked.
- (2) Subject to subsection (3), before revoking a licence under paragraphs (a) or (b) of subsection (1), the Commission must give written notice to the licensed captive insurer stating—
 - (a) the grounds upon which it intends to revoke the licence; and
 - (b) that unless the insurer, by written notice filed with the Commission, shows good reason why its licence should not be revoked, the licence will be revoked on a date not less than twenty one days after the date of the notice.
- (3) A licensed captive insurer that receives a notice under subsection (2) may, within fourteen days of receiving the notice, submit a written notice to the Commission setting out the reasons why its licence should not be revoked.
- (4) The Commission may revoke the licence of a licensed captive insurer—
 - (a) if the insurer does not submit a written notice to the Commission under subsection (3); or
 - (b) the Commission is of the opinion that it has failed to show good reason why its licence should not be revoked.

28 Notice and effect of revocation

- (1) Where the Commission revokes the licence of a licensed captive insurer, it must give written notice of the revocation to the licensee.
- (2) A revocation of a licence takes effect on—
 - (a) the date the notice referred to in subsection (1) is given to the insurer; or
 - (b) such later date as may be specified by the Commission in the notice.
- (3) On the revocation of its licence, the licensee must forthwith return to the Commission the original licence and all copies of the licence in its custody or control.

29 Directives

- (1) Where the Commission is entitled to take enforcement action against a licensed captive insurer, the Commission may issue a directive—
 - (a) imposing a prohibition, restriction or limitation on the business that may be undertaken by the insurer, including—

- (i) that the licensee must cease to engage in certain types of captive insurance business; or
 - (ii) that the licensee must not enter into any new contracts for certain types of captive insurance business:
 - (b) requiring that any director be removed and replaced by another person acceptable to the Commission:
 - (c) requiring the licensed captive insurer to take such other action as the Commission considers may be necessary—
 - (i) to protect the property of, or in the custody, possession or control of, the licensee:
 - (ii) to enable the licensee to comply with its obligations under this Act or the regulations.
- (2) The Commission may issue a directive where a person has surrendered, or intends to surrender, a licence, requiring the person to take such action as is necessary to secure that any regulated activity carried on by that person is in whole or in part suspended or discontinued.
- (3) A directive issued under subsection (1) may include one or more of the matters set out in paragraphs (a), (b) or (c) of that subsection.
- (4) Where it appears to the Commission that a Cook Islands company is carrying on unlicensed captive insurance business, the Commission may issue a directive to that company—
 - (a) requiring the company to cease carrying on that business:
 - (b) requiring the company to take such other action as the Commission considers may be necessary.
- (5) Any person who fails or refuses to comply under this section, the Commission may, in addition to any other remedy it has under this Act or at law, may impose a fine on the relevant person not exceeding \$20,000 but for a continuing offence, in addition a fine of \$1,000 per day until compliance with the directive.

30 Appointment of examiner

- (1) The Commission may by notice in writing appoint one or more competent persons as examiners to conduct investigations on its behalf—
 - (a) where it appears to the Commission that there are, or may be, grounds for taking enforcement action against a licensed captive insurer; or
 - (b) where it appears to the Commission that a licensee is carrying on business beyond the scope of its license, or has carried on unauthorised business:
 - (c) where it appears any person is carrying on or holds themselves out to carry on unauthorised business.
- (2) The matters investigated by an examiner appointed under subsection (1) may include one or more of the following—
 - (a) the nature, conduct or state of the business of the person under investigation:
 - (b) a particular aspect of the business of the person under investigation:
 - (c) the ownership or control of the person under investigation:
 - (d) in the case of a licensee, whether there are grounds for taking enforcement action against the licensee; and

- (e) in the case of any other person, whether that person is carrying on or has carried on, unauthorised business.
- (3) Subject to subsection (4), an examiner appointed under this section shall have the powers of the Commission under section 20 of the Financial Supervisory Commission Act, excluding subsection (3).
- (4) The Commission may give directions to the examiner concerning any one or more of the following—
 - (a) the scope of the investigation;
 - (b) the period for the conduct of the investigation; and
 - (c) the manner in which the examiner must report to it.
- (5) An examiner appointed under subsection (1) may, if the examiner considers it necessary for the purposes of the investigation, also investigate the business of any person who is, or at any relevant time has been—
 - (a) a member of the group of which the person under investigation is a part; or
 - (b) a partner in a partnership of which the person under investigation is also a partner.
- (6) Where a person appointed as an examiner under this section is not a member or officer of the Commission, the person must, unless agreed between the person and the Commission, be remunerated on such terms as the Commission may determine.
- (7) An examiner must submit a report of his or her investigation to the Commission.
- (8) The Commission may direct that the cost and expenses of and incidental to an investigation under this section, or any part of them, are paid for by the person to whom the investigation relates.

Part 5

Liquidation and Strike Off

31 Interpretation for this Part

In this Part—

company means a company to which this Act applies

insurer means a Cook Islands company that is, or at any time has been, a licensed captive insurer carrying on captive insurance business.

32 Winding up of insurers

The provisions of the Companies Act and International Companies Act relating to the winding up of companies are modified in respect of licensed captive insurers to the extent specified in this Part.

33 Restrictions on voluntary winding up

- (1) A licensed captive insurer must not be wound up under Part VI, Division (iii) of the Companies Act or Part IX, Division 3 of the International Companies Act as applicable, unless the Commission has given its prior written consent.
- (2) Any resolution for voluntary winding up passed by the members of a licensed captive insurer in breach of subsection (1) is void and of no effect.

- (3) Where the members of a licensed captive insurer pass a resolution for voluntary winding up in accordance with subsection (1), the Commission may by notice in writing direct the liquidator to advertise their appointment in such manner as is specified in the notice.
- (4) A liquidator who fails to advertise their appointment in accordance with a direction of the Commission issued under subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

34 Circumstances in which Commission may present winding up petition

- (1) The Commission may present a petition under section 219 of the Companies Act or section 158 of the International Companies Act for the winding up by the Court—
 - (a) of an unlicensed insurer:
 - (b) of an insurer if it is entitled to take enforcement action against the insurer under Section 26.
- (2) On a petition presented under subsection (1), the Court may make an order for the winding up of the company concerned on the grounds that the company is unable to pay its debts.
- (3) A licensed captive insurer is deemed to be unable to pay its debts if the total value of its assets does not exceed the total amount of its liabilities as calculated in accordance with the Act and regulations.

35 Service on Commission

A petition for the winding up of a licensed captive insurer must, if served by a person other than the Commission, be served on the Commission and the Commission is entitled to appear and be heard at the hearing of the petition.

36 Continuation of captive insurance business by liquidator

- (1) The liquidator of a licensed captive insurer which is a company incorporated under the International Companies Act may, unless the Court otherwise orders, carry on the captive insurance business of the insurer with a view to it being transferred as a going concern to another insurer licensed under this Act, whether in existence or to be incorporated for the purpose.
- (2) In carrying on the insurer's captive insurance business under subsection (1), the liquidator may agree to the variation of any contracts of insurance at the commencement of the winding up, but the liquidator must not effect any new contracts of insurance.
- (3) On the application of the liquidator of an insurer, the Court may by order reduce the amounts of the contracts made by the insurer in the course of carrying on its captive insurance business.
- (4) An order under subsection (3) may be made subject to such conditions as the Court considers appropriate.
- (5) The liquidator of an insurer—
 - (a) may appoint an actuary to investigate and report to the liquidator on the captive insurance business of the insurer and, if appropriate, to conduct actuarial valuations of the business; and
 - (b) may apply to the Court for the appointment of a manager to manage the business of the insurer.

- (6) A manager appointed by the Court—
 - (a) must act in accordance with such directions that may be given to the manager by the Court;
 - (b) must give such security and account in such manner as the Court may direct; and
 - (c) is entitled to be paid such remuneration as may be fixed by the Court.
- (7) For the avoidance of doubt, with the exception of subsection (1), this section applies to licensed captive insurers incorporated under the Companies Act or the International Companies Act.

Part 6

Miscellaneous Provisions

37 Restrictions on use of names of companies

A company incorporated under the Companies Act or International Companies Act, may not use the words **insurance** or **captive** or any combination or derivative thereto in its name unless it is a licensed captive insurer, the Commission has approved the use of the name by the company, or where the company is authorised by some other enactment in the Cook Islands to use the name.

Administration

38 Applications

- (1) Every application made under this Act—
 - (a) must be in writing and, either in the form approved under section 44 or in the regulations; and
 - (b) must have included with it such documentation or information as may be specified by this Act or the regulations.
- (2) The Commission may require an applicant to furnish it with such documentation and information, in addition to that specified in subsection (1)(b), as it reasonably requires to determine the application and any such information shall be in such form as the Commission may require.
- (3) If, before the determination by the Commission of an application—
 - (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Commission in connection with the application; or
 - (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,—the applicant must forthwith give the Commission written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

39 Registers

- (1) The Commission must maintain—
 - (a) a Register of Licensed Captive Insurance Companies; and
 - (b) such other registers as may be specified in the regulations.

- (2) The registers and the information contained in any document filed with the Commission may be kept in any form the Commission considers fit including, either wholly or partly, by means of a device or facility—
 - (a) that records or stores information in magnetic or electronic form; and
 - (b) that permits the information to be inspected and reproduced in legible and useable form.

40 Inspection of registers and information held by Commission

- (1) Subject to subsection (2), a person may, on payment of the prescribed fee during normal business hours—
 - (a) inspect the registers and any records kept by the Commission that are prescribed as public records; and
 - (b) require the Commission to furnish the person with a copy or certified copy of, or extract from, any document that the person would be entitled to inspect under paragraph (a).
- (2) In respect of documents filed or kept in electronic form, the rights granted under subsection (1) extend only to reproductions of those documents in useable written form produced in such manner as the Commission considers appropriate.
- (3) A copy or reproduction of, or extract from, any document or record that is kept by the Commission and certified as such by it is admissible in evidence in all legal proceedings to the same extent as the original document.

41 Electronic filing of documents

- (1) In this section, a document in electronic form is a document in a computer processable message format that is capable of being transmitted electronically.
- (2) The regulations may provide for a system enabling documents required or permitted to be filed with the Commission under this Act to be filed in electronic form.
- (3) A system for the filing of documents in electronic form must provide for—
 - (a) the criteria for authorising persons to file documents in electronic form; and
 - (b) the security and authentication of the documents filed.

42 Fees penalties and charges payable to Commission

- (1) The fees and penalties specified in the regulations, excluding any penalties imposed by a court, are payable to the Commission.
- (2) The Commission may charge a fee in respect of costs reasonably incurred in the performance of its duties under this Act.
- (3) The Commission may refuse to take any action required of it with respect to a licensee under this Act for which a fee is payable until the fee and any other fees, penalties and charges payable by, or in respect of, the licensee have been paid.
- (4) Any fee, charge or penalty which is owed to the Commission under this Act may be recovered as a debt due to the Commission.
- (5) If any licensee fails to pay the annual fee within 90 days of the date on which it fell due, the Commission may require the licensee to surrender its license.

43 Regulations

- (1) The Queen's Representative may, by Order in Executive Council, promulgate regulations—
 - (a) generally for giving effect to this Act and for its administration by the Commission; and
 - (b) specifically in respect of anything required or permitted by this Act to be contained in the regulations.
- (2) Without limiting subsection (1), the regulations may provide for the following matters—
 - (a) the policies, systems and controls to be established and maintained by licensed captive insurers with respect to—
 - (i) the assessment and management of risk; and
 - (ii) the compliance by the insurer with its obligations under this Act, and the regulations:
 - (b) principles and rules of corporate governance to be adhered to by insurers:
 - (c) the running off by an insurer of its business and the exit of insurers from the insurance market:
 - (d) prudential requirements, not inconsistent with this Act or the regulations, applicable to insurers, including (with respect to licensed captive insurers)—
 - (i) the valuation of assets and liabilities:
 - (ii) the evaluation of risks:
 - (iii) the calculation of technical provisions; and
 - (iv) permitted investments:
 - (e) principles and rules with respect to the underwriting and rating policies and methodologies to be established by insurers:
 - (f) conduct of business; and
 - (g) measures to be taken by insurers to prevent, detect and remedy fraud and other financial crime.
- (3) Regulations made under this section may provide for the imposition by the Commission of penalties on licensees that contravene a provision of this Act or the regulations.
- (4) The regulations may—
 - (a) exempt licensed captive insurers from a requirement or obligation imposed by or under this Act:
 - (b) make different provision in relation to different persons, circumstances or cases; and
 - (c) subject to subsection (4), may provide for offences and penalties for any contravention of or failure to comply with specified requirements of the regulations.
- (5) A penalty provided for an offence under the regulations may not exceed a fine of \$10,000.

44 Approved forms

- (1) Where this Act requires a document to be in **the approved form**, the Commission must approve a form.
- (2) The Commission may, with respect to any other document required or permitted to be filed, issued or produced under this Act approve a form to be used for the document.
- (3) Where, pursuant to subsection (1) or (2), the Commission has published an approved form with respect to the type of document to be filed, issued or produced under this Act—
 - (a) the approved form must be used for the document with such modifications as the circumstances require; and
 - (b) the document must contain the information specified in the approved form.
- (4) Notwithstanding subsection (3) (a), an approved form must not be varied so as to omit any information or guidance which the form gives to the intended recipient of the form.

Offence Provisions

45 False or misleading misrepresentation, statements, reports or returns

- (1) A person who makes or assists in making a representation, statement, report or return, whether oral or written—
 - (a) that is required or permitted by this Act to be made to or, in the case of a document, filed with the Commission; and
 - (b) that—
 - (i) contains a false statement of a material fact:
 - (ii) omits to state a material fact required to be provided to the Commission or necessary to avoid the statement or document being materially misleading,—commits an offence.
- (2) A person does not commit an offence under subsection (1) if the person did not know and, with the exercise of reasonable diligence, could not have known that the representation or statement contained a false statement or omitted a material fact.
- (3) A person who commits an offence under subsection (1) is liable on conviction—
 - (a) if the person is an individual, to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 2 years, or both; or
 - (b) in any other case, to a fine not exceeding \$40,000.

46 Offence committed by body corporate

Where an offence under this Act is committed by a body corporate, a director of that body corporate who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the same penalty as the body corporate.

47 Order to comply

Where a person is convicted of an offence under this Act or the regulations, the court having jurisdiction to try the offence may, in addition to any punishment

it may impose, order that person to comply with the provision of this Act or the regulations for the contravention of which the person has been convicted.

Final Provisions

48 Application of other enactments

(1) In relation to a licensed captive insurer incorporated under the International Companies Act 1981-82, no Act of the Cook Islands, or any regulation, by-law or rule thereunder, may—

(a) impose—

(i) any liability, duty, responsibility, obligation or restrictions:

(ii) any fee, impost, tax, levy, dues, duty or excise; or

(iii) any fine or penalty,—

on a licensed captive insurer; or

(b) require—

(i) the deposit of any moneys in any public account by:

(ii) the filing of any accounts, returns, reports or records by; or

(iii) the licensing or registration of,—

a licensed captive insurer, other than this Act, the Crimes Act 1969, the Criminal Procedure Act 1980-81, the Proceeds of Crime Act 2003, the Financial Supervisory Commission Act 2003, the Banking Act 2011, the Mutual Assistance in Criminal Matters Act 2003, the Extradition Act 2003, the Financial Transactions Reporting Act 2004, the Trustee Companies Act 1981-82, the Terrorism Suppression Act 2004, and the Shipping Act 1998.

49 Transitional provisions

The transitional provisions specified in the Schedule must have effect.

Schedule Transitional Provisions

Interpretation

1. In this Schedule—
commencement date means the date this Act comes into force.

Licensees under the Insurance Act

2. A Cook Islands company for which this Act applies that engaged in captive insurance business which, immediately prior to the commencement date, held a licence granted under the Insurance Act is deemed to have been granted a licence under this Act on the commencement date.
3. The Commission shall, within one month of the commencement date, issue each company that is deemed to have been granted a licence under paragraph 2 with a replacement licence issued under this Act.

Application of Financial Supervisory Commission Act 2003

4. Sections 20, 21, 22 and 23 of the Financial Supervisory Commission Act 2003 apply to a licensed captive insurer, as if it was a licensed financial institution.

This Act is administered by the Financial Supervisory Commission.
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