



Insurance (Prudential Supervision) Amendment Regulations 2012

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 30th day of July 2012

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 237 of the Insurance (Prudential Supervision) Act 2010, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, and on the advice of the Minister of Finance given in accordance with a recommendation of the Reserve Bank of New Zealand made after taking into account, so far as relevant, the principles in section 4 of that Act, makes the following regulations.

Contents

	Page
1 Title	3
2 Commencement	3
3 Principal regulations	3
4 Regulation 3 amended (Interpretation)	3
5 Regulation 5 replaced (Prescribed jurisdictions for purposes of certain provisions)	3
5 Prescribed jurisdictions for purposes of certain provisions	3

**Insurance (Prudential Supervision)
Amendment Regulations 2012**

2012/196

6	Regulation 14 replaced (Certain consumer credit insurance contracts are not life policies)	4
	14 Certain credit insurance contracts are not life policies	4
7	New regulations 15 to 34 and cross-headings inserted	5
	<i>Statutory funds: General matters</i>	
	15 Notice to Bank when statutory fund established	5
	16 Transfer of assets on establishment	6
	17 Unsecured borrowing	6
	18 Investment of assets in associated persons of life insurer	6
	19 Recording of restricted investments	6
	20 Requirements for transfer of life policies between statutory funds by endorsement	7
	<i>Statutory funds: Allocation of profits and losses and capital payments</i>	
	21 Interpretation relating to allocation of profits and losses and capital payments	9
	22 Rules relating to allocation of operating profits and losses	10
	23 Obligation to allocate operating profit or loss	10
	24 Operating profit or loss	10
	25 Allocation of operating profit or loss	11
	26 Basis of allocation of operating profit or loss	12
	27 Distribution of retained profits	12
	28 Distribution of shareholders' or members' capital	13
	29 Policyholders' retained profits	14
	30 Shareholders' or members' capital	15
	31 Shareholders' or members' retained profits (non-participating)	15
	32 Shareholders' or members' retained profits (participating)	16
	33 Life insurer must have regard to appointed actuary's advice	17
	34 Aggregate retained profits not to be allocated more than once	17

Regulations

- 1 Title**

These regulations are the Insurance (Prudential Supervision) Amendment Regulations 2012.
- 2 Commencement**

These regulations come into force on 1 September 2012.
- 3 Principal regulations**

These regulations amend the Insurance (Prudential Supervision) Regulations 2010 (the **principal regulations**).
- 4 Regulation 3 amended (Interpretation)**

In regulation 3, insert in its appropriate alphabetical order:
“**maintain the solvency margin**, in relation to a statutory fund, means that the life insurer complies with the condition of its licence imposed under section 21(2)(c) of the Act”.
- 5 Regulation 5 replaced (Prescribed jurisdictions for purposes of certain provisions)**

Replace regulation 5 with:

“5 Prescribed jurisdictions for purposes of certain provisions

“(1) The following are prescribed jurisdictions for the purposes of sections 19(4) and 38(3) of the Act:

 - “(a) the Commonwealth of Australia:
 - “(b) Bermuda:
 - “(c) Delaware, United States of America:
 - “(d) France:
 - “(e) Germany:
 - “(f) Illinois, United States of America:
 - “(g) India:
 - “(h) Indiana, United States of America:
 - “(i) Japan:
 - “(j) the Netherlands:
 - “(k) the United Kingdom.

“(2) The Commonwealth of Australia is a prescribed jurisdiction for the purposes of section 119(3) of the Act.”

6 Regulation 14 replaced (Certain consumer credit insurance contracts are not life policies)

Replace regulation 14 with:

“14 Certain credit insurance contracts are not life policies

- “(1) For the purposes of section 84(4) of the Act, specified credit insurance contracts are declared to be a class of contracts that are not life policies.
- “(2) A contract is a **specified credit insurance contract** if—
- “(a) the contract is entered into in connection with 1 or more loans; and
 - “(b) the contract provides for both life insurance and non-life insurance (within the meaning of section 85(6) of the Act but applied as if this regulation were not in force); and
 - “(c) by the terms of the contract, all of the following apply:
 - “(i) the duration of the contract in respect of the life insurance benefits is not more than 5 years; and
 - “(ii) the sum insured in respect of the life insurance benefits must not exceed the lesser of—
 - “(A) the unpaid balance under the loan (or if there is more than 1 loan, the aggregate unpaid balance of the loans); and
 - “(B) \$200,000; and
 - “(iii) if the sum insured in respect of the life insurance benefits is paid by regular payments, the maximum period for which those payments may be made must not exceed—
 - “(A) the remaining term of the loan; or
 - “(B) if there is more than 1 loan, the longest remaining term of those loans; and
 - “(d) the insurer is a non-life insurer.
- “(3) In subclause (2),—
- “**life insurance benefits** means the benefits of the life insurance referred to in subclause (2)(b)
- “**loan**—
- “(a) means a credit contract within the meaning of section 7 of the Credit Contracts and Consumer Finance Act 2003; but

“(b) does not include a credit contract entered into primarily for the purpose of providing finance to enable, or facilitate, the purchase of real property

“**non-life insurer** means an insurer that, if both of the following are disregarded, is not liable under any life policy:

“(a) contracts that satisfy the requirements referred to in subclause (2)(a) to (c):

“(b) life policies that are part of a portfolio of life insurance policies that is closed to new business and is being run-off by the insurer

“**unpaid balance** means the amount owing under a loan at a particular time, being the difference between all amounts credited and all amounts debited to the debtor under the loan at that time.”

7 New regulations 15 to 34 and cross-headings inserted

After regulation 14, insert:

“Statutory funds: General matters

“15 Notice to Bank when statutory fund established

“(1) A notice under section 88 of the Act of the establishment of a statutory fund must contain the following (in addition to the matters specified in section 88(1)(a) to (c) of the Act):

“(a) particulars of the types of life insurance business to be carried on by the life insurer within the fund:

“(b) particulars of the proposed external financing arrangements for the writing of new life insurance business to which the fund relates:

“(c) business projections of the life insurance business to which the fund relates for whichever is greater of the following periods:

“(i) the period of the external financing arrangements for that business; and

“(ii) 5 years:

“(d) a statement by the appointed actuary of the validity of the assumptions and methodology relating to the business projections referred to in paragraph (c).

“(2) For the purposes of section 88(2) of the Act, the notice must be given in writing within 90 days after the establishment of the statutory fund.

“(3) In subclause (1), **external** means external to the statutory fund.

“**16 Transfer of assets on establishment**

For the purposes of sections 89 and 92(a) of the Act, the value of assets that a life insurer must transfer to a statutory fund on its establishment is an amount that is sufficient to ensure that, immediately after the establishment of the fund, the life insurer will maintain the solvency margin in respect of the fund.

“**17 Unsecured borrowing**

“(1) For the purposes of section 94(4) of the Act, the amount to be ascertained in the prescribed manner must be calculated using the following formula:

$$50\% \times (a - b)$$

where—

a is the amount of the total assets of the statutory fund

b is the amount of assets of the statutory fund required to ensure that the insurer continues to maintain the solvency margin of the fund.

“(2) The calculation required by subclause (1) must be made on the basis that the unsecured borrowing has occurred.

“**18 Investment of assets in associated persons of life insurer**

For the purposes of section 99(4) of the Act, the percentage is 2.5%.

“**19 Recording of restricted investments**

“(1) For the purposes of section 100 of the Act, a record of a life insurer’s restricted investments must contain the following information:

“(a) the name of the issuer of the investment:

“(b) the nature of the investment (for example, shares, a debenture, or convertible notes):

“(c) the amount of the investment:

- “(d) the amount referred to in paragraph (c) as a percentage of the value of all assets of the statutory fund.
- “(2) The records referred to in subclause (1)(c) and (d) must, as soon as practicable after each balance date of the life insurer, be updated to state the amount and percentage as at the balance date.
- “(3) The amount of the investment and the value of all assets of the statutory fund must be determined in accordance with generally accepted accounting practice.
- “(4) In subclause (2), **balance date** has the same meaning as in section 7 of the Financial Reporting Act 1993.

“20 Requirements for transfer of life policies between statutory funds by endorsement

- “(1) For the purposes of section 111(2) of the Act, the part of the liabilities of the life insurer that is of equivalent value to the assets that must be transferred to each statutory fund must be ascertained by—
 - “(a) identifying the life policy that has become referable to another statutory fund or a further statutory fund or further statutory funds;
 - “(b) determining the amount of the policy liability in relation to the life policy;
 - “(c) determining the amount of the other liabilities of the life insurer that—
 - “(i) arose out of the conduct of the business of the statutory fund or funds that the life policy was referable to before the endorsement took effect; and
 - “(ii) may fairly be attributed to the life policy;
 - “(d) if the life policy is referable to more than 1 statutory fund as a result of the endorsement taking effect, determining the proportion of the liabilities under paragraphs (b) and (c) that are attributable to each of those funds based on the proportion of the premium that is to be credited to each fund.
- “(2) If, as a result of the endorsement taking effect, the life policy is referable to—

- “(a) 1 statutory fund, the assets to be transferred to the fund must be of a value equivalent to the sum of the amounts determined under subclause (1)(b) and (c):
 - “(b) more than 1 statutory fund, the assets to be transferred to each fund must be of a value equivalent to the amount determined under subclause (1)(d) in respect of the fund.
- “(3) A life insurer must determine the amounts under subclause (1) after—
- “(a) obtaining the written advice of the appointed actuary on the matter; and
 - “(b) having regard to that advice.
- “(4) For the purposes of section 111(3) of the Act, the notice given to the policyholder in relation to an endorsement must—
- “(a) be in writing; and
 - “(b) be given within 20 working days after the endorsement takes effect; and
 - “(c) identify the life policy that is subject to the endorsement; and
 - “(d) identify the statutory funds that the life policy—
 - “(i) was referable to before the endorsement took effect; and
 - “(ii) is referable to as a result of the endorsement taking effect; and
 - “(e) specify the date on which the endorsement took effect; and
 - “(f) if the life policy has become referable to 2 or more statutory funds, specify—
 - “(i) the benefits under the policy that are to be provided out of each fund; and
 - “(ii) either the proportion of the premium that is related to the benefits to be provided out of each fund and is to be credited to the fund or the way in which that proportion is to be calculated; and
 - “(g) contain, or be accompanied by, a document that briefly describes the reasons for the endorsement.
- “(5) In this regulation, **endorsement** means an endorsement referred to in section 91(4) of the Act.

“Statutory funds: Allocation of profits and losses and capital payments

“21 Interpretation relating to allocation of profits and losses and capital payments

“(1) In these regulations,—

“constitution, in relation to a life insurer,—

“(a) means,—

“(i) in the case of a company within the meaning of the Companies Act 1993, the constitution of the company; and

“(ii) in any other case, the documents or instruments constituting or defining the constitution of the insurer; and

“(b) includes any other document governing the activities or conduct of the life insurer

“non-participating benefit means a benefit provided under a life policy other than a participating benefit

“non-participating business means life insurance business that consists of the provision of non-participating benefits under life policies

“participating benefit—

“(a) means a benefit that has both of the following features:

“(i) the benefit is provided under a life policy:

“(ii) the benefit includes an entitlement to share in a distribution by the life insurer of profits or a surplus derived from the assets of a statutory fund; and

“(b) includes a benefit provided under a life policy entered into before 1 September 2012 that is of a class of benefit identified by an actuary as involving participation in profits; but

“(c) does not include—

“(i) an investment-linked benefit (within the meaning of section 98(3) of the Act); or

“(ii) a benefit provided under a multiple life policy (within the meaning of section EY 30(14) of the Income Tax Act 2007); or

- “(iii) a benefit provided under a workplace group policy (within the meaning of section EY 30(15) of the Income Tax Act 2007); or
- “(iv) a benefit provided under a contract of reinsurance
- “**participating business** means life insurance business that consists of the provision of participating benefits under life policies
- “**policyholders’ retained profits** has the meaning set out in regulation 29
- “**shareholders’ or members’ capital** has the meaning set out in regulation 30
- “**shareholders’ or members’ retained profits (non-participating)** has the meaning set out in regulation 31
- “**shareholders’ or members’ retained profits (participating)** has the meaning set out in regulation 32.
- “(2) The categories of business of a statutory fund for the purposes of regulations 22 to 34 are participating business and non-participating business.
- “(3) In the case of a body corporate that has members but not shareholders, the reference in regulation 27 or 28 to members’ funds must be treated as a reference to an account of the life insurer that represents funds that are not assets of a statutory fund.
- “**22 Rules relating to allocation of operating profits and losses**
Regulations 23 to 26 apply for the purposes of section 112 of the Act.
- “**23 Obligation to allocate operating profit or loss**
If financial statements given to the Bank under section 81(1) of the Act disclose that a category of business of a statutory fund has an operating profit for the period to which the statements relate or has incurred an operating loss for the period, the life insurer must allocate the profit or loss, as the case may be.
- “**24 Operating profit or loss**
- “(1) A category of business of a statutory fund has an operating profit for a period if the income of the category for the period exceeds outgoings of the category for the period (and the

amount of the operating profit is the amount by which income exceeds outgoings).

- “(2) A category of business of a statutory fund incurs an operating loss for a period if the outgoings of the category for the period exceed the income of the category for the period (and the amount of the operating loss is the amount by which outgoings exceed income).

“25 Allocation of operating profit or loss

- “(1) A life insurer must allocate all of the operating profit or loss of a category of business of a statutory fund for a period.
- “(2) A life insurer allocates an operating profit for a period by identifying in its financial statements prepared as at the end of the period—
- “(a) the amount of the profit; and
 - “(b) the amount of the profit that should be treated as, or added to, policyholders’ retained profits; and
 - “(c) the amount of the profit that should be treated as, or added to, shareholders’ or members’ retained profits (participating); and
 - “(d) the amount of the profit that should be treated as, or added to, shareholders’ or members’ retained profits (non-participating).
- “(3) A life insurer allocates an operating loss for a period by identifying in its financial statements prepared as at the end of the period—
- “(a) the amount of the loss; and
 - “(b) the amount representing the portion of the loss to be taken into account in the reduction of policyholders’ retained profits; and
 - “(c) the amount representing the portion of the loss to be taken into account in the reduction of shareholders’ or members’ retained profits (participating); and
 - “(d) the amount representing the portion of the loss to be taken into account in the reduction of shareholders’ or members’ retained profits (non-participating).

“26 Basis of allocation of operating profit or loss

“(1) The allocation of an operating profit of a category of business of a statutory fund must be made in accordance with the following rules:

“(a) in the case of a profit of a category representing participating business, at least 80%, or such higher percentage as is specified in the constitution of the insurer, of the profit must be treated as, or added to, policyholders’ retained profits of the statutory fund:

“(b) any part of a profit of a category representing participating business and not allocated under paragraph (a) must be treated as, or added to, shareholders’ or members’ retained profits (participating) of the statutory fund:

“(c) a profit of a category representing non-participating business must be treated as, or added to, shareholders’ or members’ retained profits (non-participating) of the statutory fund.

“(2) The allocation of an operating loss of a category of business of a statutory fund must be made in accordance with the following rules:

“(a) in the case of a loss of a category representing participating business, no more than 80%, or such higher percentage as is specified in the constitution of the insurer, may be taken into account in the reduction of policyholders’ retained profits of the statutory fund:

“(b) any part of a loss of a category representing participating business and not allocated under paragraph (a) must be allocated in the reduction of shareholders’ or members’ retained profits (participating) of the statutory fund:

“(c) a loss of a category representing non-participating business must be allocated in the reduction of shareholders’ or members’ retained profits (non-participating) of the statutory fund.

“27 Distribution of retained profits

“(1) This regulation applies for the purposes of section 114 of the Act.

- “(2) A distribution of retained profits of a statutory fund must be in accordance with the following rules:
- “(a) policyholders’ retained profits may only be distributed to policyholders of life policies that provide for participating benefits:
 - “(b) shareholders’ or members’ retained profits (participating) and shareholders’ or members’ retained profits (non-participating) may be—
 - “(i) transferred to shareholders’ or members’ funds; or
 - “(ii) transferred to another statutory fund of the life insurer; or
 - “(iii) distributed to policyholders of life policies that provide for participating benefits.
- “(3) A distribution of retained profits of a statutory fund may only be made after the directors of the life insurer have received the written advice of the appointed actuary as to the likely consequences of the proposed distribution.
- “(4) A distribution of retained profits of a statutory fund must not be made if—
- “(a) the distribution would have the result that the insurer would fail to maintain the solvency margin in relation to the fund; or
 - “(b) the distribution would involve a contravention of a direction given by the Bank under Part 4 of the Act.
- “(5) A distribution of shareholders’ or members’ retained profits (participating) must not be made if—
- “(a) a distribution of policyholders’ retained profits is not made at the same time; and
 - “(b) immediately after the distribution, the shareholders’ or members’ retained profits (participating) of the statutory fund that remain undistributed are less than 25% (or such lower percentage as is specified in the life insurer’s constitution) of the policyholders’ retained profits of the statutory fund that remain undistributed.

“28 Distribution of shareholders’ or members’ capital

- “(1) This regulation applies for the purposes of section 115 of the Act.

- “(2) A distribution of shareholders’ or members’ capital in relation to a statutory fund—
- “(a) may only be made after the directors of the life insurer have received written advice from the appointed actuary as to the likely consequences of the proposed distribution; and
- “(b) must not be made if—
- “(i) the distribution would have the result that the insurer would fail to maintain the solvency margin in relation to the fund; or
- “(ii) the distribution would involve a contravention of a direction given by the Bank under Part 4 of the Act.
- “(3) Shareholders’ or members’ capital may be distributed in the following ways:
- “(a) by transfer to shareholders’ or members’ funds:
- “(b) by transfer to another statutory fund of the life insurer:
- “(c) by distribution to policyholders of life policies that provide for participating benefits.

“29 Policyholders’ retained profits

- “(1) In these regulations, **policyholders’ retained profits**, in relation to a statutory fund at a particular time, means the amount derived in accordance with the following formula:

$$(a + b) - (c + d)$$

where—

- a is the starting amount as defined in subclause (2)
- b is the total of the amounts allocated, before that time, under regulation 26(1)(a)
- c is the total of the amounts referred to in variables a and b distributed before that time
- d is the total of the amounts allocated, before that time, under regulation 26(2)(a).
- “(2) In this regulation, the **starting amount** is the sum of—
- “(a) a part of the aggregate retained profits of the category of business of the statutory fund representing participating business—
- “(i) as determined by the life insurer; and

- “(ii) that is at least 80%, or a higher percentage that is specified in the life insurer’s constitution, of those aggregate retained profits; and
- “(b) a part of the aggregate retained profits of the category of business of the statutory fund representing non-participating business as determined by the life insurer.

“30 Shareholders’ or members’ capital

- “(1) In these regulations, **shareholders’ or members’ capital**, in relation to a statutory fund at a particular time, means the amount derived in accordance with the following formula:

$$(a + b) - c$$

where—

- a is the starting amount as defined in subclause (2)
- b is the total amount of capital payments allocated, before that time, under section 113(2) of the Act
- c is the total of the amounts referred to in variables a and b distributed before that time.

- “(2) In this regulation, the **starting amount** is the sum of—
- “(a) the aggregate shareholders’ or members’ capital of the statutory fund; and
 - “(b) a part of the aggregate retained profits of the category of business of the statutory fund representing participating business—
 - “(i) as determined by the life insurer; and
 - “(ii) that is not allocated to the starting amount for policyholders’ retained profits, shareholders’ or members’ retained profits (participating), or shareholders’ or members’ retained profits (non-participating) under these regulations; and
 - “(c) a part of the aggregate retained profits of the category of business of the statutory fund representing non-participating business as determined by the life insurer.

“31 Shareholders’ or members’ retained profits (non-participating)

- “(1) In these regulations, **shareholders’ or members’ retained profits (non-participating)**, in relation to a statutory fund at a

particular time, means the amount derived in accordance with the following formula:

$$(a + b) - (c + d)$$

where—

- a is the starting amount as defined in subclause (2)
- b is the total of the amounts allocated, before that time, under regulation 26(1)(c)
- c is the total of the amounts referred to in variables a and b distributed before that time
- d is the total of the amounts allocated, before that time, under regulation 26(2)(c).

- “(2) In this regulation, the **starting amount** is the sum of—
- “(a) a part of the aggregate retained profits of the category of business of the statutory fund representing participating business—
 - “(i) as determined by the life insurer; and
 - “(ii) that is not allocated to the starting amount for policyholders’ retained profits or shareholders’ or members’ retained profits (participating) under these regulations; and
 - “(b) a part of the aggregate retained profits of the category of business of the statutory fund representing non-participating business as determined by the life insurer.

“**32 Shareholders’ or members’ retained profits (participating)**

- “(1) In these regulations, **shareholders’ or members’ retained profits (participating)**, in relation to a statutory fund at a particular time, means the amount derived in accordance with the following formula:

$$(a + b) - (c + d)$$

where—

- a is the starting amount as defined in subclause (2)
- b is the total of the amounts allocated, before that time, under regulation 26(1)(b)
- c is the total of the amounts referred to in variables a and b distributed before that time

- d is the total of the amounts allocated, before that time, under regulation 26(2)(b).
- “(2) In this regulation, the **starting amount** is the sum of—
- “(a) a part of the aggregate retained profits of the category of business of the statutory fund representing participating business that is not allocated to the starting amount for policyholders’ retained profits under these regulations; and
 - “(b) a part of the aggregate retained profits of the category of business of the statutory fund representing non-participating business as determined by the life insurer.
- “33 **Life insurer must have regard to appointed actuary’s advice**
A life insurer must, in determining an amount under any of regulations 29 to 32,—
- “(a) obtain the written advice of the appointed actuary on the matter; and
 - “(b) have regard to that advice.
- “34 **Aggregate retained profits not to be allocated more than once**
The sum of the amounts of aggregate retained profits of a category of business that are allocated to the starting amounts mentioned in regulations 29 to 33 must not exceed the total aggregate retained profits of the category.”

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 September 2012, amend the Insurance (Prudential Supervision) Regulations 2010 by—

- changing the jurisdictions that are prescribed for the purposes of sections 19(4), 38(3), and 119(3) of the Insurance (Prudential Supervision) Act 2010 (the **Act**). These provisions of the Act provide for certain requirements to be treated as being satisfied in relation to insurers that are incorporated in prescribed jurisdictions; and
- replacing regulation 14, which declares certain credit contracts entered into by non-life insurers to be of a class that are not life policies. *New regulation 14—*
 - allows the contract to relate to more than 1 loan:
 - allows the relevant loans to be any credit contract, not just consumer credit contracts:
 - requires the contract to provide both non-life benefits and benefits that, but for the regulation, would be considered to be life benefits:
 - provides that the events insured against are not restricted to death and disablement resulting from accident or sickness:
 - inserts a maximum sum insured of \$200,000:
 - provides for the definition of non-life insurer to exclude legacy business from consideration; and
- inserting rules relating to statutory funds that must be established by life insurers in respect of their life insurance business.

The statutory fund rules relate to—

- the establishment of statutory funds:
- the restriction on unsecured borrowing for the purposes of the business of statutory funds under section 94(4) of the Act:
- the percentage of the value of the assets of a statutory fund that may be invested in associated persons of the life insurer:
- the recording of restricted investments:

- the transfer of life policies between statutory funds by endorsement:
- the allocation of profits and losses and capital payments:
- the distribution of retained profits and of capital.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 2 August 2012.
These regulations are administered by the Reserve Bank of New Zealand.
