

Competitive provision of ACC – a legal perspective – lessons and learnings from 1999

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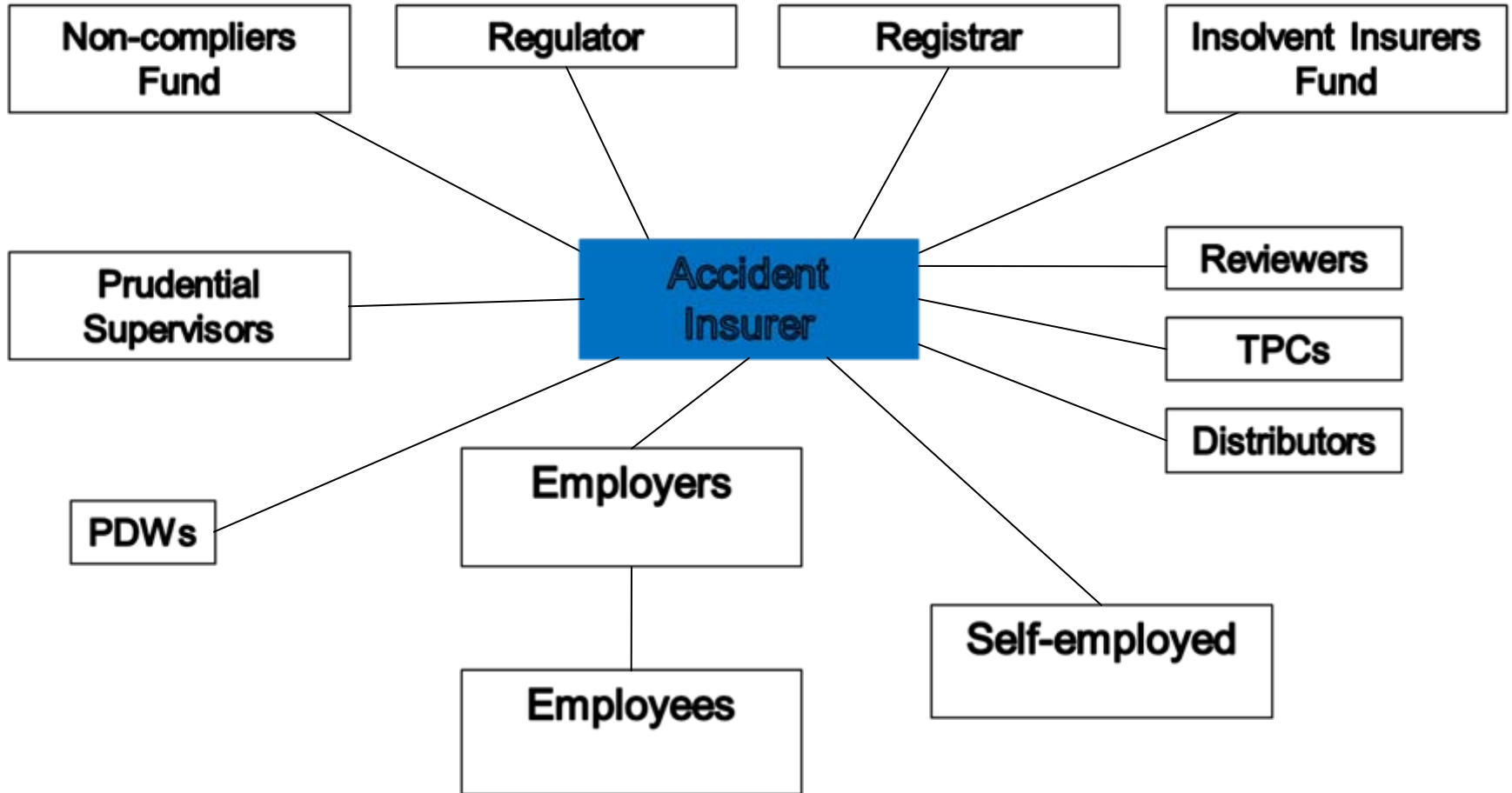
Session objectives

- Selective observations on structural and regulatory matters
- Practical focus
- Discussion welcomed
- Not focusing on coverage, boundary issues or claims

Overview

- Business structure
- Accident insurance contracts
- Risk sharing
- Prudential regulation – past, present and future
- Dispute resolution

1999 Structure



1999 Business structure

- New Zealand incorporated company required (no branches)
- Could use existing general insurer or SPV
- Mixed approach in 1999
- First charge over assets
- Decision based on legal, financial, actuarial and regulatory factors
- Note proposed regulation relating to foreign owned branches of general insurers (mutual recognition; ratings; local incorporation)

Accident Insurance Contracts

- Implied terms under the Act included
 - coverage (who, when)
 - entitlements (how much)
 - claims process
 - dispute resolution process
 - transferability
 - termination
- Obligation to offer contract – subject to terms and conditions determined by insurers
- Timing for creation – clarity was essential

Accident Insurance Contracts continued

- “Low doc” approach possible
- Additional or increased benefits possible
- “Privity” for employer contracts
- Termination provisions important
- Misrepresentation/non-disclosure
- Compulsory transferability

Risk Sharing

- Employer could agree with insurer to carry out certain obligations of the insurer
- Insurer remained liable
- Range of arrangements, including captives and capped arrangements. Focus on termination provisions.
- Air New Zealand, AFFCO and Fletcher Challenge

Regulatory regime – past, present and future (simplified)

	General insurers (current)	General insurers (proposed)	1999 Accident Insurer
NZ incorporation	No	No	Yes
Recognition of overseas regulation	No	Yes	N/A
Deposit	Yes	No	Yes
Licensing	No	Yes	Yes
Rating	Yes	Yes	Yes
Fit and proper requirements	No	Yes	No
Prudential Supervisor	No	Yes	Yes
Actuary required	Yes (in practice)	Yes	Yes (in practice)

Regulatory regime – past, present and future continued

	General insurers (current)	General insurers (proposed)	1999 Accident Insurer
Insurance specific solvency requirements	No	Yes	Yes
Connected party transaction provisions	No	Yes	Limited
Ongoing monitoring	Yes (?)	Yes	Yes
Prevention of non – insurance activities	No	Yes	Limited
Control of mergers etc	No	Yes	Limited
Insurance specific distress management	No	Yes	Yes
Charge over assets	No	No	Yes
Customisation possible	No	Yes	Yes (?)

Prudential regulator – eligibility

- Trustee company
- Conflicts of interest “any other relationship that is likely to materially conflict with the exercise of the duties of a prudential supervisor under the Act”
- Monitoring of conflicts

Prudential supervisors - duties

- Establish prudent solvency margin and other prudent covenants
- To monitor solvency
- To ensure assets available
- To take enforcement action
- To monitor compliance with registration requirements
- To inform Regulator
- To hold first charge over assets
- Person to whom duties owed include the Minister of Finance, the Regulator and any contributor to the Insolvent Insurers Fund

Prudential supervisor – prudent solvency margins

- Insurers 1 and 2 – minimum capital requirement not less than greatest of
 - \$2 million (note proposed reforms)
 - 20% of Premium Income
 - 50% of Net Central Estimate of Outstanding Claims Liabilities plus estimate of Non-accident Insurance Contract Claims
- Insurer 3 – Owners Equity not less than \$25 million or 25% of Total Premium
- More comparative information to follow

Prudential Regulator - Covenants

- Trust deeds contained numerous covenants
- For example:
 - Disposal of assets other than in ordinary course of business
 - Alteration of business
 - Related parties
 - Investment restrictions
 - Information sharing
- How do these apply in any new regime?
- Comparative table to follow.

Future structure for Prudential Regulation

- General discussion

Accident insurance regulator

- Collected data on work place accidents, claims and contracts
- Prosecuted employers who failed to effect a work place insurance contract
- Oversaw the management of the non-compliers fund
- Managed the insolvent insurers fund
- Generally enforced obligations of employers, self-employed, PDWs and insurers

Non-compliers fund

- Pay benefits where employer had not effected cover
- Administered by an insurer – Fusion
- Level of non-compliance – 1.3% employers and 0.07% of liable earnings
- Only two employers prosecuted
- Identified non-compliance by IRD number testing

Insolvent insurers fund

- Assume liabilities of insolvent insurer, to protect claimants
- Prudential supervisors, administrator and Regulator had responsibilities
- Future liabilities to be limited by cancelling or transferring contracts
- Employer levy
- Insurer levy
- Crown advances
- Expectation that residual liability would be purchased

HIH failure

- General discussion

Dispute resolution

- Independent reviewer
 - Disclosure of interests
 - Principles of natural justice
 - Act in a timely manner
- District Court
- High Court or Court of Appeal on matters of law

Miscellaneous

- Whistle blowing obligations on actuaries