

## WILLIS ALERT

Date: 13 May 2011

From: Jessica Schade Willis New Zealand Ltd

Subject: Financial Services Provider (Dispute Resolution) Act – Captive Exemption

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The Insurance (Prudential Supervision) Act 2010 (ISP Act) requires insurance companies to register as a Financial Service Provider under the Financial Service Providers (Registration & Disputes Resolution) Act 2008 (FSP Act).

Willis have discussed this requirement with Bell Gully, our legal advisers and can confirm that a Captive Insurance Company is exempt from the requirement to be registered as a financial service provider under both the FSP and ISP Acts:

### FSP Act

The FSP Act regulates “financial service providers” by requiring each financial service provider who is in the business of providing a “financial service”:

- (a) to be registered on an online financial service providers register (the FSPR); and
- (b) to join an approved dispute resolution scheme, if the financial service provider provides a financial service to a “retail client”.

A “financial service” includes (amongst other things) acting as an insurer. A captive insurer will be acting as an insurer and, therefore, providing a “financial service” for the purposes of the FSP Act.

The Financial Service Providers (Exemptions) Regulations 2010 provide an exemption from the application of the FSP Act in respect of a relevant service (e.g., acting as an insurer) provided to a “related body corporate”. The captive insurer’s parent company and other subsidiaries of that parent company are related bodies corporate of the captive insurer for this purpose. As a captive insurer only acts as an insurer for related companies (and does not provide any other “financial services”), this exemption should apply.

A captive is, therefore, not required to register on the FSPR or join a dispute resolution scheme under the FSP Act.

## ISP Act

Section 19(k) of the Insurance (Prudential Supervision) Act 2010 (the ISP Act) requires, as a pre-requisite to being licensed, that an applicant:

- (i) is registered under the FSP Act

A Captive Insurance Company can apply for an exemption to register under the FSP Act on the grounds mentioned above.

The Companies Office will then issue a notice of exemption from registration under the FSP Act; this can be submitted to the RBNZ as part of the license application package to satisfy the requirements set under the ISP Act.

If you have any questions in relation to this please contact me.

Regards,

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