



ANALYSIS

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1983, No. 51

An Act to amend the Insurance Companies' Deposits Act 1953 and to repeal the Accident Insurance Companies Act 1908 and its amendments [6 December 1983]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Insurance Companies' Deposits Amendment Act 1983, and shall be read together with and deemed part of the Insurance Companies' Deposits Act 1953 (hereinafter referred to as the principal Act).

2. New sections inserted—The principal Act is hereby amended by inserting, after section 12, the following sections:

“12A. Application of securities by Public Trustee—

(1) This section and sections 12B to 12D of this Act shall apply to the securities and any money deposited under this Act by a company in respect of the carrying on by it of insurance business otherwise than as an agent.

“(2) Where a company which has deposited securities or any money, or on behalf of which any such deposit has been made, is being wound up in New Zealand, the Public Trustee shall either—

“(a) Convert all the securities to which this section applies and held by the Public Trustee into money, and pay the aggregate amount of such money, together with any money previously deposited by the company to which this section applies and held by the Public Trustee, to the liquidator of the company; or

“(b) Transfer to the liquidator of the company or any nominee of the liquidator all such securities and any money deposited by the company and held by the Public Trustee.

“(3) Any money paid to the liquidator under subsection (2) (a) of this section, or any securities (including the proceeds of conversion by the liquidator) and money transferred to the liquidator under subsection (2) (b) of this section or the proceeds arising from any transfer to a nominee of the liquidator under subsection (2) (b) of this section (as the case may be), shall in the hands of the liquidator be subject to the same trusts as the securities held by the Public Trustee were subject to under this Act.

“(4) The payment of any money to the liquidator of the company under subsection (2) (a) of this section, or the transfer of any securities and money to the liquidator of the company or any nominee of the liquidator under subsection (2) (b) of this section (as the case may be) shall discharge the Public Trustee from the trusts respecting the securities and any money deposited by the company to which this section applies.

“(5) Nothing in this section shall authorise the payment of any money, or the transfer of any securities to any person outside New Zealand.

“12B. Liquidator to value policies in winding up—(1) In the winding up of a company the liquidator shall determine the amount of the liability of the company to each policyholder under each policy of insurance issued, granted, or entered into in New Zealand by the company in such manner and upon such basis as the liquidator decides.

“(2) Notice in writing of the amount of such liability under each policy of insurance determined under subsection (1) of this section shall be given by the liquidator to each policyholder by:

“(a) Giving it personally to that person; or

“(b) Sending it to that person by post addressed to that person either by name or office at that person's last known place of abode or business, or at any address given by that person.

“(3) Notice given under subsection (2) of this section if by post, shall be deemed, in the absence of proof to the contrary, to be effected at the time when the notice would have been delivered in the ordinary course of post.

“(4) The amount of the liability of the company as determined by the liquidator under subsection (1) of this section, shall be binding upon each policyholder to whom notice is given under subsection (2) of this section, unless, within 2 months after the date such notice was given, that person appeals to the High Court against the liquidator's determination.

“(5) On an appeal to the High Court against the liquidator's determination, the High Court may confirm, reverse, or modify the determination appealed against and may make such other order as it thinks just.

“12C. **Liquidator to distribute securities**—(1) The liquidator shall, in accordance with this section, distribute to each policyholder entitled thereto—

“(a) The sum paid to the liquidator by the Public Trustee under section 12A (2) (a) of this Act; or

“(b) The sum representing the proceeds of conversion into cash of any securities transferred by the Public Trustee to the liquidator together with any money so transferred, or the proceeds arising from any transfer to a nominee of the liquidator (as the case may be).

“(2) The amount of such sum to which each policyholder is entitled on a distribution under this section shall be—

“(a) In the case of policyholders of a class of insurance business in respect of which the deposit was held by the Public Trustee under section 12 of this Act, an amount equal to the proportion that the liability of the company in respect of each such policyholder determined under section 12B of this Act bears to the liability of the company to all such policyholders; or

“(b) In the case of all policyholders of the company in respect of which the deposit was held by the Public Trustee under section 12 of this Act, in the proportion that the liability of the company in respect of each policyholder determined under section 12B of this Act bears to the liability of the company to all policyholders; or

“(c) An amount equal to the value of the policy—
whichever is the lesser.

“(3) Distributions under this section shall be made as soon as practicable after—

“(a) Payment to the liquidator by the Public Trustee under section 12A (2) (a) of this Act; or

“(b) The conversion into cash of any of the securities referred to in subsection (1) (b) of this section; or

“(c) The receipt of the proceeds arising from any transfer to a nominee of the liquidator; or

“(d) The determination of any appeal under section 12B of this Act, or if there is more than one such appeal, the determination of all such appeals,—

whichever is later in time.

“(4) Every policyholder shall be entitled to prove in the liquidation of a company for any amount which remains owing by the company to that policyholder under a contract of insurance following a distribution under this section.

“12D. **Section 12 (4) not to apply where company being wound up**—Where a company is being wound up no person shall make an application under section 12 (4) of this Act and the Court shall not make any order under that subsection.”

3. Statements to be supplied annually—(1) The principal Act is hereby amended by repealing section 16 (as amended by section 3 of the Insurance Companies' Deposits Amendment Act 1972), and substituting the following section:

“16. (1) Every person required by this Act to make a deposit with the Public Trustee shall, at the expiration of each financial year, prepare a statement or statements in relation to the business, operations, or undertaking conducted in or from New Zealand by that person in that year in the form and containing the particulars prescribed by the Second Schedule to this Act.

“(2) The Governor-General may from time to time, on the recommendation of the Minister of Justice, by Order in Council add to, alter, or substitute a new form for the form contained in the Second Schedule to this Act.

“(3) Before making any recommendation for the purposes of subsection (2) of this section, the Minister of Justice shall do everything reasonably possible to advise all persons, who in his opinion will be affected by any order made under that subsection of the proposed terms thereof and the reasons therefor, and shall give such persons a reasonable opportunity to make submissions to him.

“(4) Failure to comply with subsection (3) of this section shall not affect the validity of any order made under subsection (2) of this section.

“(5) Notwithstanding subsection (2) of this section, a company may in respect of any financial year commencing before the commencement of an Order in Council made under that subsection, deposit any statement required to be deposited under this section in the form contained in the Second Schedule to this Act immediately before the commencement of that order.

“(6) Every such statement shall be audited by a person qualified to be the auditor of a company under section 402 (5) of the Companies Act 1955, and shall be printed or typewritten, and, together with 2 printed or typewritten copies thereof, shall be deposited with the Secretary for Justice within 9 months after the close of the financial year to which it relates.

“(7) The original of each statement shall be signed by the auditor, and shall also be signed in the case of a company by the principal officer of the company managing its business in New Zealand, or in the case of a mutual insurance association by the secretary or manager of the association, or in the case of a person not being a company or a mutual insurance association, by that person.

“(8) Nothing in this section shall require a company to prepare a statement or statements in relation to any financial year if the Secretary for Justice is satisfied that the company did not in the course of that year carry on any class of insurance business.”

(2) Section 3 of the Insurance Companies' Deposits Amendment Act 1972 is hereby consequentially repealed.

4. Withdrawal of deposits—Section 19 of the principal Act is hereby amended by inserting, after subsection (1B) (as inserted by section 2 of the Insurance Companies Deposits' Amendment Act 1977), the following subsections:

“(1c) Any person who has made a deposit with the Public Trustee under section 3 (1) (e) of this Act as an agent of a Commonwealth underwriter or of a foreign underwriter in respect of marine insurance business, may withdraw that

deposit to the extent that he is relieved from making such a deposit by virtue of section 3 (5) of this Act.

“(1D) Any person who has made a deposit with the Public Trustee under section 3 (1) (f) of this Act may withdraw that deposit to the extent that he is relieved from making such a deposit by virtue of section 3 (5) of this Act.”

5. Penalty for non-compliance—The principal Act is hereby amended by repealing section 20, and substituting the following section:

“20. (1) Any person who makes default in complying with any of the requirements of this Act and, where that person is a company or a mutual insurance association, every officer of that company or mutual insurance association who is in default, commits an offence and shall be liable on summary conviction to a fine not exceeding \$100 for every day during which the default continues.

“(2) For the purposes of this section the expression ‘officer of that company or mutual insurance association who is in default’ means any officer of the company or mutual insurance association who—

“(a) Knowingly and wilfully authorises or permits the default;
or

“(b) Knew or ought to have known of the default, and did not take all reasonable steps to secure compliance by the company or mutual insurance association with the requirements of this Act.”

6. Prohibition against agent negotiating contracts of insurance—The principal Act is hereby amended by inserting, after section 20, the following section:

“20A. (1) No agent shall negotiate, or attempt to negotiate, or hold himself out as having authority to negotiate any contract of insurance on behalf of any company or underwriter, which has not made the deposit required under this Act.

“(2) Any agent who negotiates, or attempts to negotiate, or holds himself out as having authority to negotiate any contract of insurance on behalf of any company or underwriter, who has not made the deposit required under this Act, commits an offence and shall be liable on summary conviction to a fine not exceeding \$100.

“(3) Nothing in this section shall apply to—

“(a) An agent of a company or an underwriter if that agent has made the deposit required to be made by him under this Act as the agent of that company or underwriter:

“(b) An agent of a Commonwealth underwriter or a foreign underwriter, or a Commonwealth company or a foreign company if that agent has made a deposit under section 4B of this Act.

“(4) It shall be a defence to a charge under this section if the agent proves that he had reasonable grounds for believing and did believe that the deposit had been made by the company or underwriter.”

7. Prohibition against carrying on business—The principal Act is hereby amended by repealing section 21 (as amended by section 2 of the Insurance Companies' Deposits Amendment Act 1972) and substituting the following section:

“21. (1) If any person makes default in complying with any of the requirements of this Act, and such default continues for a period of 3 months, the Minister of Justice may by notice published in the *Gazette* prohibit that person from carrying on insurance business or any class of insurance business in New Zealand, either absolutely or for such time as he declares.

“(2) Notwithstanding subsection (1) of this section, notice of a temporary prohibition under this section shall not be published in the *Gazette* if the period during which the person is prohibited from carrying on business or any class of business, does not exceed 3 months and the Minister of Justice considers publication to be unwarranted.

“(3) For the purposes of this section a person shall be deemed to be carrying on insurance business in New Zealand not only if he does so on his own account but also if he acts as agent in respect of insurance business.”

8. Further penalty for carrying on business after notice prohibiting—The principal Act is hereby amended by repealing section 22, and substituting the following section:

“22. (1) Any person prohibited from carrying on insurance business or any class of insurance business under section 21 of this Act, or any person as attorney, general agent, or other agent for him or otherwise for or on his behalf, who, after publication of any notice under section 21 of this Act, or with knowledge of a prohibition under that section, receives any application for insurance, or accepts any premium for insurance, or otherwise carries on the business of that person in New Zealand in contravention of the prohibition, commits an offence and shall be liable on summary conviction to a fine not exceeding \$200 for every act in contravention of the prohibition in addition to any penalty for which he may be liable under section 20 or section 20A of this Act.

“(2) For the purposes of this section, a person shall not be regarded as carrying on insurance business or any class of insurance business in New Zealand by reason only that he receives premiums or other money or does any other acts in respect of policies that have already been issued.

“(3) Subject to subsection (2) of this section, for the purposes of this section a person shall be deemed to be carrying on insurance business in New Zealand not only if he does so on his own account but also if he acts as agent in respect of insurance business.”

9. Repeals and savings—Section 25 (1) of the principal Act is hereby amended by omitting the word “Second”, and substituting the word “Third”.

10. New Schedule inserted—The principal Act is hereby amended by inserting, after the First Schedule, the Second Schedule set out in the Schedule to this Act.

11. Amendment to Second Schedule—The Second Schedule to the principal Act is hereby amended by omitting the word “Second”, and substituting the word “Third”.

Accident Insurance Companies Act 1908 Repealed

12. Accident Insurance Companies Act 1908 repealed—

(1) The Accident Insurance Companies Act 1908 (as amended by the Accident Insurance Companies Amendment Act 1972 and the Accident Insurance Companies Amendment Act 1977) and the First Schedule thereto are hereby repealed.

(2) The Accident Insurance Companies Amendment Act 1972 and the Accident Insurance Companies Amendment Act 1977 are hereby consequentially repealed.

13. Transitional provisions—(1) Notwithstanding section 12 of this Act, every company to which the Accident Insurance Companies Act 1908 applied immediately before the commencement of this Act, shall prepare and deposit a statement in accordance with that Act in respect of the financial year of that company commencing immediately before the commencement of this Act.

(2) Nothing in subsection (1) of this section shall apply to a company which has deposited a statement in accordance with section 16 of the Insurance Companies' Deposits Act 1953 in respect of that financial year.

SCHEDULE

Section 10

NEW SECOND SCHEDULE TO INSURANCE COMPANIES' DEPOSITS ACT 1953

"SECOND SCHEDULE

Section 16

UNDERWRITING ACCOUNT OF THE [NAME OF COMPANY] FOR THE YEAR
ENDED 19

	<i>Current Year</i>	<i>Comparative Figures Previous Year</i>
<i>Income</i>		
Gross Premium Income ⁽¹⁾		
Deduct (Add) changes in insurance provisions		
- Unearned premiums		
- Lapse reserve		
- Other (specify)		
Deduct reinsurance ceded		
Earned premiums		
<i>Claims</i>		
Claims paid		
Add (Deduct) increase (reduction) in		
- Outstanding claims provision		
- Provision for claims incurred but not reported		
- Other claims provisions		
Deduct recoveries		
- Reinsurance		
- Other		
Net claims incurred		
<i>Result</i>		
Earned Premiums		
Less net claims incurred		
Underwriting profit (loss) before expenses		
<i>Underwriting Expenses</i>		
Net Commissions		
Management Expenses		
Depreciation charged on fixed assets used in underwriting operations		
Payment to New Zealand Fire Service Commission ⁽²⁾		
Total Underwriting Expenses		
Net Underwriting Profit (Loss)		

SCHEDULE—continued

NEW SECOND SCHEDULE TO INSURANCE COMPANIES' DEPOSITS ACT 1953—continued

“SECOND SCHEDULE—continued

INVESTMENT INCOME ACCOUNT OF THE [NAME OF COMPANY] FOR THE YEAR
ENDED 19

	Current Year	Comparative Figures Previous Year
<i>Investment Income</i> ⁽³⁾		
(a) Interest (exclude interest from holding company and subsidiaries ⁽⁴⁾)		
(b) Dividends (exclude dividends from subsidiaries ⁽⁴⁾)		
(c) Net rents		
(d) Other investment income (losses)		
(e) Intergroup income (subsidiaries and holding company ⁽⁴⁾)		
Sub-Total		
(f) Deduct expenses		
Net Investment Income (Loss)		

PROFIT AND LOSS ACCOUNT OF THE [NAME OF COMPANY] FOR THE YEAR
ENDED 19

	Current Year	Comparative Figures Previous Year
Net Underwriting Profit (Loss)		
Net Investment Income (Loss)		
Other income (Specify)		
Other expenses (Specify)		
Extraordinary items (Specify)		
Net profit (loss) before tax		
Taxation		
Net Profit Transferred to Appropriation Account		

APPROPRIATION ACCOUNT OF THE [NAME OF COMPANY] FOR THE YEAR
ENDED 19

	Current Year	Comparative Figures Previous Year
Undistributed profit (loss) brought forward at beginning of financial year		
Net profit (loss) transferred from Profit and Loss Account		
<i>Add</i>		
Prior years adjustments (specify)		
Transfers from reserves (specify)		
Other items (specify)		
Available for appropriation		
<i>Deduct</i>		
Dividends to shareholders		
Prior years adjustments (specify)		
Extraordinary items (specify)		
Transfer to reserves (specify)		
Transfer to insurance funds (specify)		
Other items (specify)		
Undistributed profit (loss) carried forward at the end of financial year and shown in Balance Sheet		

SCHEDULE—*continued*NEW SECOND SCHEDULE TO INSURANCE COMPANIES' DEPOSITS ACT 1953—*continued*"SECOND SCHEDULE—*continued*"

BALANCE SHEET OF THE [NAME OF COMPANY] AS AT

19

THE balance sheet shall be the balance sheet which the company is required to deliver to the Registrar of Companies under the Companies Act 1955. The balance sheet shall comply with any requirements of the Eighth Schedule to that Act from which the company is exempted from compliance with by an Order in Council made under that Schedule.

Where the company is not required to deliver a balance sheet to the Registrar, the balance sheet shall contain the particulars (including any particulars exempted by an Order in Council made under the Eighth Schedule) of the balance sheet which the company would be required to deliver if it were—

- (a) In the case of a local company, a company registered under Part II of the Companies Act 1955; or
- (b) In the case of a Commonwealth or foreign company, an overseas company which has established a place of business in New Zealand.

NOTES:

- (1) Gross premium income means the gross income earned from premiums after deducting any rebates or refunds allowed or paid to persons insured, but without making any allowance or deduction for reinsurances, commissions or other agency charges, or for any insurance provisions.
- (2) Show amount of contribution paid to New Zealand Fire Service Commission under section 47 of the Fire Service Act 1975.
- (3) The company shall state by note or in a statement of its accounting policies whether the investment income is accounted for on an accrual or cash basis.
- (4) The terms "holding company" and "subsidiary" have the meanings assigned to them by section 158 of the Companies Act 1955."

This Act is administered in the Department of Justice.
