

INSURANCE COMPANIES (RATINGS AND INSPECTIONS)

EXPLANATORY NOTE

THIS Bill gives effect to recommendations contained in a report to the Government by Dr D. Brash, and Mr I. McLean that insurers be required to have a current rating by an approved rating agency of their claims paying ability in relation to insurance other than life insurance.

The Bill also incorporates, with some amendments, the Insurance Companies Law Reform Bill 1993. That Bill, which was formerly *Part VI* of the Companies (Ancillary Provisions) Bill 1991, was retained by the Justice and Law Reform Select Committee for further consideration after the Committee had reported the Companies (Ancillary Provisions) Bill back to the House. *Clause 176* of that Bill, which relates to the minimum capital requirement for insurance companies carrying on insurance business, except life insurance, has not been carried forward into this Bill.

Part I of the Bill relates to the rating of insurance companies. With certain exceptions insurance companies will be required to have a current rating from an approved rating agency of their claims paying ability under contracts of insurance except life insurance.

Part I applies to insurers that carry on business in New Zealand but does not apply in relation to the business of life insurance.

Part II relates to inspection and liquidation of insurance companies. It incorporates *clauses 179 to 188 and 190* of the Companies (Ancillary Provisions) Bill 1991 with some modifications although the substance of those provisions is the same.

Part III of the Bill includes what was formerly *clause 177* of the Companies (Ancillary Provisions) Bill 1991. That clause prohibits the issue by a company of any insurance proposal containing an application for shares in or membership of the company. It also includes *clause 189* of that Bill which provides for the repeal of Part XIII of the Companies Act 1955.

Clause 1 relates to the Short Title and commencement of the Bill. The Bill is expressed to come into force on 1 July 1994. The following clauses of the Bill, however, will not apply to insurers already carrying on business in New Zealand on the coming into force of the Bill until 12 months after the commencement of the Bill:

- (a) *Clause 4*, which imposes the obligation on insurers to have a current rating:

(b) *Clause 9*, which requires insurers to disclose their current ratings to an insured before entering into or renewing insurance contracts:

(c) *Clause 11*, which requires insurers that are not required to have current ratings to disclose that fact to an insured before entering into or renewing contracts of insurance.

Clause 2 relates to the interpretation of certain terms used in the Bill.

Clause 3 defines public notice for the purposes of *Part I* of the Bill.

PART I

RATING OF INSURANCE COMPANIES

Clause 4 requires every insurer that carries on business in New Zealand to have a current rating from an approved rating agency. A rating is an assessment in the form of a letter or symbol that forms part of a rating scale adopted by the approved rating agency of the insurer's ability to pay claims that the insurer is liable to pay at the time of the assessment (including an estimate of unreported claims) and claims that are likely to arise in the future at the time they arise.

Clause 5 requires every insurer, within 5 working days after a rating has been given, to deliver a copy of the rating to the Registrar of Companies for registration.

Clause 6 provides for the inspection of ratings on payment of a prescribed fee.

Clause 7 requires an insurer to give public notice of any downgrading of its rating but permits the insurer to include in the notice any additional matter that the insurer considers relevant to a proper understanding of the reasons for the downgrading.

Clause 8 enables insurers that are not parties to contracts of general or disaster insurance to elect not to be rated. Notice of any such election must be delivered to the Registrar for registration. An election by an insurer not to be rated may be revoked by the insurer and, in that event, the insurer becomes subject to the obligation to have a current rating.

Clause 9 provides that every insurer that is required to have a current rating must disclose that rating together with the rating scale in writing to an insured before entering into or renewing any contract of insurance. Where an insurance intermediary discloses the current rating of the proposed insurer together with the rating scale, the insurer is to be treated as having made the disclosure. If it is not practicable to make the disclosure before the contract is entered into or renewed, the obligation to disclose is complied with if the rating and the scale are disclosed orally before the contract is entered into or renewed and also in writing as soon as it is practicable to do so.

Clause 10 entitles an insured to cancel a contract of insurance if the requirement to disclose under *clause 9* is not complied with. The contract must be cancelled by notice in writing to the insurer within 20 working days after the contract was entered into or renewed. If a contract is cancelled, the insured is not liable for payment of premiums relating to the period commencing on the date of cancellation and ending on the date on which the contract would have expired and is entitled to recover from the insurer any premiums already paid that relate to that period.

Clause 11 provides that an insurer that is not required to have a current rating, must, before entering into or renewing a contract of insurance, disclose that fact in writing to the insured. Where an insurance intermediary discloses the fact that the proposed insurer is not required to have a current rating, the insurer is to be treated as having made the disclosure. If it is not practicable to make the disclosure before the contract is entered into or renewed, the obligation to

disclose is complied with if the fact that the insurer is not required to have a current rating is disclosed orally before the contract is entered into or renewed and also in writing as soon as it is practicable to do so.

Clause 12 is similar in effect to *clause 10*.

Clause 13 provides that where an insurance intermediary arranges a contract of insurance or the renewal of a contract of insurance between an insured and an insurer that does not carry on business in New Zealand, the intermediary must, before the contract is entered into or renewed, disclose in writing to the insured the most recent rating of the insurer together with the rating scale or, if it does not have a rating, the fact that no such rating is available. The rating that must be disclosed is a rating from an agency generally recognised by the insurance industry in New Zealand and overseas as competent to assess the claims paying ability of the insurer. If it is not practicable to make the necessary disclosure in writing before the contract is entered into or renewed, the obligation to disclose is complied with if the rating and the scale are, or the fact that no rating is available is, disclosed orally before the contract is entered into, or renewed and also in writing as soon as it is practicable to do so.

Clause 14 is also similar in effect to *clause 10*.

Clause 15 empowers the High Court to make an order restraining an insurer that is carrying on business in contravention of *clause 4* from carrying on business in New Zealand and also to rescind any such order.

Clause 16 relates to the approval of a rating agency. It provides for the Registrar of Companies to approve a rating agency on the recommendation of the Insurance Council. The Registrar must be satisfied, before approving any person or organisation, that the person or organisation has entered into an agreement with the Council as to the fees, or the method of determining the fees, payable by insurers to the approved agency for providing ratings under the Bill and that insurers that are required to have current ratings but that are not members of the Council have been consulted as to the terms of the agreement.

Clause 17 empowers the Registrar to revoke the approval of an approved rating agency if satisfied that the agency has, without sufficient cause, failed to provide a current rating for an insurer. The Registrar may not revoke an approval unless the Registrar gives the agency notice in writing that he or she is considering revoking the approval, together with reasons, and the agency is given an opportunity to make representations to the Registrar.

Clause 18 requires the agreement between the Insurance Council and the approved agency to contain a schedule that must set out the terms and conditions relating to fees applying to the provision of ratings and that may also set out other terms and conditions and deems those terms and conditions to be terms and conditions of every agreement between an insurer and the approved agency.

Clause 19 requires the Registrar to keep a register or registers for the purposes of *Part I* of the Bill.

Clause 20 provides for certain defences in proceedings for offences against insurers and directors of insurers.

Clause 21 provides that *Part I* of the Bill applies despite the provisions of any agreement or the fact that the proper law of any contract is not New Zealand law. The clause prevents contracting out.

Clause 22 requires the Minister of Justice to appoint a person or persons to undertake, 2 years after a rating agency is first approved, a review of the operation of both the rating provisions of the Bill and the Insurance Companies' Deposits Act 1953.

Clause 23 confers power on the Governor-General to prescribe fees payable by insurers on registration of ratings and amounts payable by way of penalty for late registration.

PART II

INSPECTION AND LIQUIDATION OF INSURANCE COMPANIES

Clause 24 is the same as *clause 179* of the Insurance Companies Law Reform Bill 1993 and confers power on the Registrar or a person authorised by the Registrar to obtain information relating to the affairs of an insurance company for the purpose of determining whether the company is unable to pay its debts.

Clause 25 is similar to *clause 180* of that Bill and relates to the disclosure of information and reports obtained in the course of an inspection. The clause has been aligned with section 366 of the Companies Act 1993 so as to make it consistent with the information privacy principles contained in the Privacy Act 1993.

Clause 26 is similar to *clause 181* of that Bill and limits the application of the Official Information Act 1982 and the Privacy Act 1993 in relation to the disclosure of information and reports obtained in the course of any investigation.

Clause 27 is the same as *clause 182* of that Bill and provides for a right of appeal to the High Court against a refusal to disclose under *clause 26*.

Clause 28 is the same as *clause 183* of that Bill and provides that a report prepared in relation to an inspection under *clause 24* is admissible in evidence on an application to put an insurance company into liquidation under *clause 31*.

Clause 29 is the same as *clause 184* of that Bill and provides for a right of appeal to the High Court against the exercise by the Registrar or a person appointed by the Registrar of a power under *clause 24*.

Clause 30 is the same as *clause 185* of that Bill and provides that a power conferred by *clause 24* may continue to be exercised despite any appeal or application to the High Court.

Clause 31 is the same as *clause 186* of that Bill. It empowers the High Court, on the application of the Registrar of Companies to put an insurance company into liquidation if it is satisfied that the company is unable to pay its debts.

Clause 32 is the same as *clause 187* of that Bill and defines the circumstances in which an insurance company is to be treated as being unable to pay its debts.

Clause 33 is the same as *clause 188* of that Bill and makes it clear that an insurance company may be put into liquidation under the provisions of any other Act as well as under *clause 31*.

Clause 34 is a transitional provision and is substantially the same as *clause 190* of the Insurance Companies Law Reform Bill 1993. The clause provides that *Part II* of the Bill does not affect any investigation of the affairs of an insurance company under *Part XIII* of the Companies Act 1955 before the commencement of the Bill or the winding up of any insurance company under that Act commenced before the commencement of the Bill. It also continues the application of certain provisions of the Companies Act 1955 in the case of certain transactions that took place before the commencement of the Bill.

PART III

MISCELLANEOUS

Clause 35 is the same as *clause 177* of the Insurance Companies Law Reform Bill 1993. The clause prohibits the issue by any company of a form of insurance proposal that contains an application for shares in or membership of the

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company. It also prohibits the allotment of shares to a person who makes a proposal of insurance to a company unless a separate application for shares in or membership of the company is first received by the company.

Clause 36 is the same as *clause 189* of that Bill and provides for the repeal of Part XIII of the Companies Act 1955.

INSURANCE COMPANIES (RATINGS AND INSPECTIONS)

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A BILL INTITULED

An Act to provide for—

- (a) The rating of the claims paying ability of insurers in relation to the business of insurance except life insurance; and**

(b) Inspections of insurance companies of doubtful solvency; and
(c) The liquidation of insolvent insurance companies

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Insurance Companies (Ratings and Inspections) Act 1994. 5

(2) This Act shall come into force on the 1st day of July 1994.

2. Interpretation—(1) In this Act, unless the context otherwise requires,— 10

“Approved agency” means an agency for the time being approved under section 16 of this Act:

“Arrange” in relation to a contract of insurance, includes negotiate, solicit, or procure any such contract:

“Company” has the same meaning as in— 15

(a) Section 2 of the Companies Act 1955; or

(b) Section 2 of the Companies Act 1993—

as the case may be, and includes an overseas company within the meaning of section 2 the Companies Act 1993: 20

“Continuous disability insurance contract” means a contract of insurance—

(a) That forms part of a life insurance policy; and

(b) That is for a term of not less than a year; and

(c) By the terms of which a person is entitled to a benefit in the event, during the term of the contract, of the death of a person by accident or by another cause specified in the contract or of injury to or the disability of a person as the result of accident or sickness: 25 30

“Contract of insurance” includes a contract of reinsurance:

“Court” means the High Court of New Zealand; and includes a Judge of that Court:

“Current rating” means a rating that, in relation to a date on which an insurer is required to have a rating, was given not earlier than a year before that date: 35

“Director” means—

(a) In relation to a company, a person occupying the position of a director of the company by whatever name called: 40

(b) In relation to a partnership, other than a special partnership, a partner:

(c) In relation to a special partnership, any general partner:

5 (d) In relation to a body corporate or unincorporate, other than a company or a partnership or a special partnership, a person occupying a position in the body that is comparable with that of a director of a company:

10 (e) In relation to any other person, that person:

“Disaster insurance” means insurance against loss, destruction, or damage to tangible property caused by earthquake, natural landslip, volcanic eruption, hydrothermal activity, or tsunami; and includes fire caused by or that results from any of those things:

15 “General insurance” means insurance against loss, destruction, or damage to tangible property, and includes third party motor vehicle insurance; but does not include disaster insurance:

20 “Insurance company” means a body corporate or an association of persons that carries on or has, at any material time, carried on any insurance business:

“Insurance Council” means the Insurance Council of New Zealand Incorporated:

25 “Insurance intermediary” means a person—

(a) Who, for reward, arranges contracts of insurance in New Zealand or elsewhere; and

(b) Who does so as the employee of or agent for one or more insurers or as the agent of the insured:

30 “Insured” means a person who has entered into, or who proposes to enter into, a contract of insurance with an insurer:

“Insurer” means a person by whom or on whose behalf the risk or part of the risk to which a contract of insurance relates is accepted; and includes a person who represents that that person will accept the risk or part of the risk under such a contract:

35 “Life insurance” means insurance for the payment of money on the death of any person (not being death by accident or as the result of a specified sickness or disease) or on the occurrence of any contingency dependent on the termination or continuance of human life, whether or not a benefit is included under a continuous disability insurance contract; and
40 includes—
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(a) An instrument that evidences a contract that is subject to the payment of premiums for a term dependent on the termination or continuance of human life; and

(b) An instrument securing the grant of an annuity for a term dependent on the continuance of human life: 5

“Minister” means the Minister of Justice:

“Rating” means an assessment represented by a letter or symbol that forms part of a rating scale adopted by an approved agency of an insurer’s ability to pay— 10

(a) Claims that the insurer is liable to pay at the time of the assessment, including an estimate of unreported claims; and

(b) Claims likely to arise in the future at the time that they arise: 15

“Registrar” means the Registrar of Companies appointed under the Companies Act 1993:

“Working day” means a day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, The Sovereign’s Birthday, Labour Day, and Waitangi Day; and 20

(b) A day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year; and 25

(c) If the 1st day of January in any year falls on a Friday, the following Monday; and

(d) If the 1st day of January in any year falls on Saturday or a Sunday, the following Monday and Tuesday. 30

(2) For the purposes of this Act, a person carries on insurance business in New Zealand, if the person is—

(a) A body corporate or an association of persons, not being an overseas person, incorporated or formed in New Zealand; or 35

(b) An overseas company that is required to be registered or deemed to be registered under the Companies Act 1993; or

(c) Ordinarily resident in New Zealand; and acts, or has at any material time acted, as an insurer in New Zealand or elsewhere, and is liable as an insurer under a contract of insurance to an insured in New Zealand. 40

(3) Where the last day of the period prescribed under section 5 of this Act for delivering a certified copy of a current rating to the Registrar falls on the anniversary of the province in which 45

the appropriate office determined by the Registrar is situated, the copy and report may be delivered on the next working day.

(4) For the purposes of **subsection (2) (c)** of this section, a person is ordinarily resident in New Zealand if that person—

- 5 (a) Is domiciled in New Zealand; or
- (b) Is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New Zealand, whether or not that person has on occasions been away from
- 10 New Zealand during that period.

3. Public notice—(1) Where, pursuant to **Part I** of this Act, notice must be given of any matter affecting an insurer, not being an insurer to which **subsection (2)** of this section applies, that notice must be given by publishing notice of the matter—

- 15 (a) In at least 1 issue of the *Gazette*; and
- (b) In at least 1 issue of a newspaper circulating in the area in which is situated—
 - (i) The insurer's place of business; or
 - 20 (ii) If the insurer has more than 1 place of business, the insurer's principal place of business.

(2) Where, pursuant to **Part I** of this Act, notice must be given of any matter affecting an insurer that is established or incorporated and has its chief office outside New Zealand, that notice must be given by publishing notice of the matter—

- 25 (a) In at least 1 issue of the *Gazette*; and
- (b) In at least 1 issue of a newspaper circulating in the area in which is situated—
 - (i) The place of business in New Zealand of the insurer; or
 - 30 (ii) If the insurer has more than 1 place of business in New Zealand, the principal place of business in New Zealand of the insurer.

PART I

RATING OF INSURANCE COMPANIES

35 **4. Insurers to have current rating**—(1) This section applies to every insurer that carries on insurance business in New Zealand, but does not apply in relation to the business of life insurance carried on by the insurer.

40 (2) Subject to **section 8** of this Act, every insurer to which this section applies and every director of that insurer, must ensure that the insurer has a current rating from an approved agency.

(3) If an insurer to which this section applies carries on business in New Zealand without having a current rating the

insurer and every director of the insurer commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.

(4) This section shall commence to apply to an insurer that is carrying on business on the coming into force of this Act on the date that is 12 months after the coming into force of this Act.

5. Registration of ratings—(1) Every insurer must, within 5 working days after a rating has been given by an approved rating agency in respect of that insurer, deliver a certified copy of the rating to the Registrar for registration.

(2) The insurer must pay the prescribed registration fee.

(3) Without limiting subsection (4) of this section, where an insurer delivers a certified copy of the rating to the Registrar for registration after the expiry of the period referred to in subsection (1) of this section, the Registrar may require the insurer to pay by way of penalty, in addition to the prescribed fee, such amount as may be prescribed.

(4) Where an insurer fails to comply with subsection (1) of this section, the insurer and every director of the insurer commits an offence and is liable on summary conviction to a fine not exceeding \$50,000.

6. Inspection of current ratings—Current ratings registered under section 5 of this Act shall be open to inspection by any person on payment of such fee as may be prescribed.

7. Public notice to be given where rating downgraded—(1) Where, for the purposes of this Act, an insurer is given a rating by an approved agency that is lower in value than the immediately preceding rating given to the insurer, the insurer must, within 10 working days after the lower rating is given, give public notice of the fact that the rating has been downgraded.

(2) Any notice given by an insurer under subsection (1) of this section may include any additional matter that the insurer considers is relevant to a proper understanding of the reasons for the downgrading of the rating.

(3) Where an insurer fails to comply with subsection (1) of this section, the Registrar may give the notice required and any costs incurred by the Registrar in doing so shall be recoverable from the insurer as a debt due to the Crown.

(4) Where an insurer fails to comply with subsection (1) of this section, the insurer and every director of the insurer commits

an offence and is liable on summary conviction to a fine not exceeding \$50,000.

8. Certain insurers not required to have current rating—(1) Notwithstanding **section 4** of this Act, an insurer is not required to have a current rating if—

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(a) The insurer is not a party, in its capacity as an insurer, to a contract for any form of disaster insurance or general insurance; and

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(b) The insurer has delivered to the Registrar for registration a notice in the prescribed form of election by the insurer not to be rated under this Act; and

(c) The election has not been revoked.

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(2) An insurer may at any time deliver to the Registrar for registration a notice in the prescribed form of the revocation of an election not to be rated and, if it does so, the insurer becomes subject to **section 4** of this Act.

(3) A notice under this section takes effect—

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(a) On the date specified in the notice, not being a date that is earlier than the date on which the notice is delivered to the Registrar for registration; or

(b) If no date is specified, on the date on which the notice is registered.

9. Disclosure of current rating to insured—(1) Subject to **subsection (4)** of this section, an insurer that is required to comply with **section 4** of this Act must, before entering into or renewing a contract of insurance, not being a contract relating solely to life insurance, disclose both the insurer's current rating and the rating scale to the insured in writing.

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(2) An insurer is deemed to have complied with **subsection (1)** of this section if the insured is given—

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(a) Before the contract is entered into, a form of proposal, cover note, policy, or other document intended as evidence of the contract on which the current rating of the insurer and the rating scale are stated clearly and prominently; or

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(b) Before the contract is renewed, a renewal notice on which the current rating of the insurer and the rating scale are stated clearly and prominently,—

as the case may be.

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(3) Where an insurance intermediary, in arranging a contract of insurance or the renewal of a contract of insurance, discloses to the insured, in writing and before the contract is entered into or renewed both the current rating of the proposed insurer and

the rating scale, the insurer shall be deemed to have complied with **subsection (1)** of this section.

(4) Where it is not reasonably practicable for an insurer or an intermediary, as the case may be, to disclose the current rating of the insurer and the rating scale in writing and before the contract is entered into or renewed, **subsection (1)** of this section shall be deemed to have been complied with if the current rating and the rating scale are disclosed to the insured—

(a) Orally before the contract is entered into or renewed; and

(b) In writing as soon as it becomes practicable to do so.

(5) This section shall commence to apply to an insurer that is carrying on business in New Zealand on the coming into force of this Act on a date that is 12 months after the coming into force of this Act.

10. Cancellation of insurance if current rating not disclosed—(1) Where a contract of insurance is entered into or renewed, as the case may be, and the provisions of **section 9** of this Act have not been complied with, the insured may, within 20 working days after the contract is entered into or renewed, cancel the contract by notice in writing to the insurer.

(2) Where a contract of insurance is cancelled under **subsection (1)** of this section, the insured ceases to be liable for the payment of any premiums relating to the period commencing on the date on which the contract is cancelled and ending on the date on which the contract would have terminated, and any premiums paid by the insured to the insurer or any intermediary that relate to that period must be repaid to the insured by the insurer.

11. Disclosure by insurers not required to be rated—

(1) Subject to **subsection (4)** of this section, an insurer that is not required to have a current rating must, before entering into a contract of insurance or renewing a contract of insurance, not being a contract solely of life insurance, disclose to the insured in writing that, as a result of an election by the insurer, the insurer is not required to have a current rating.

(2) An insurer is deemed to have complied with **subsection (1)** of this section if the insured is given—

(a) Before the contract is entered into, a form of proposal, cover note, policy, or other document intended as evidence of the contract that states clearly and prominently that the insurer has, in accordance with this Act, elected not to have a current rating and accordingly is not required to have such a rating; or

(b) Before the contract is renewed, a renewal notice that states clearly and prominently that the insurer has, in accordance with this Act, elected not to have a current rating and accordingly is not required to have such a rating,—
5 as the case may be.

(3) Where an insurance intermediary, in arranging a contract of insurance or the renewal of a contract of insurance, discloses, in writing and before the contract is entered into or renewed, to the insured that the proposed insurer has, in accordance with this Act, elected not to have a current rating and accordingly is not required to have such a rating, that insurer shall be deemed to have complied with **subsection (1)** of this section.

(4) Where it is not reasonably practicable for an insurer or an intermediary, as the case may be, to disclose in writing and before the contract is entered into or renewed that the insurer has, in accordance with this Act, elected not to have a current rating and accordingly is not required to have such a rating, **subsection (1)** of this section shall be deemed to have been complied with if that fact is disclosed to the insured—

(a) Orally before the contract is entered into or renewed; and

(b) In writing as soon as it becomes practicable to do so.

(5) This section shall commence to apply to an insurer that is carrying on business in New Zealand on the coming into force of this Act on a date that is 12 months after the coming into force of this Act.

12. Cancellation of insurance if section 11 not complied with—(1) Where a contract of insurance is entered into or renewed, as the case may be, and the provisions of **section 11** of this Act have not been complied with, the insured may, within 20 working days after the contract is entered into or renewed, cancel the contract by notice in writing to the insurer.

(2) Where a contract of insurance is cancelled under **subsection (1)** of this section, the insured ceases to be liable for the payment of any premiums relating to the period commencing on the date on which the contract is cancelled and ending on the date on which the contract would have terminated, and any premiums paid by the insured to the insurer or any intermediary that relate to that period must be repaid to the insured by the insurer.

13. Disclosure by insurance intermediaries effecting insurance outside New Zealand—

(1) Subject to **subsection (3)** of this section, where an insurance intermediary arranges a contract of insurance or the renewal of a contract of insurance, not being a contract solely of life insurance, between an insured and an insurer that does not carry on insurance business in New Zealand, the insurance intermediary must, before the contract is entered into or the insurance is renewed, disclose in writing to the insured—

(a) The most recent rating of the insurer given by an agency generally recognised by the insurance industry in New Zealand and overseas as competent to assess the claims paying ability of insurers and the rating scale; or

(b) That no such rating is available,—
as the case may be.

(2) An insurance intermediary may comply with **subsection (1)** of this section by giving to the insured—

(a) Before the contract is entered into, a form of proposal, cover note, policy, or other document intended as evidence of the contract that states clearly and prominently the insurer's rating and the rating scale or that no rating is available; or

(b) Before the contract is renewed, a renewal notice that states clearly and prominently the insurer's rating and the rating scale or that no rating is available,—
as the case may be.

(3) Where it is not reasonably practicable for an intermediary to disclose in writing and before the contract is entered into or renewed the insurer's rating and the rating scale or that no rating is available, as the case may be, **subsection (1)** of this section shall be deemed to have been complied with if disclosure is made to the insured—

(a) Orally before the contract is entered into or renewed; and
(b) In writing as soon as it becomes practicable to do so.

14. Cancellation of insurance if section 13 not complied with—

(1) Where a contract of insurance is entered into or renewed, as the case may be, and the provisions of **section 13** of this Act have not been complied with, the insured may, within 20 working days after the contract is entered into or renewed, cancel the contract by notice in writing to the insurance intermediary.

(2) Where a contract of insurance is cancelled under **subsection (1)** of this section, the insured ceases to be liable for

5 the payment of any premiums relating to the period commencing on the date on which the contract is cancelled and ending on the date on which the contract would have terminated, and any premiums paid by the insured to the insurer or the intermediary that relate to that period must be repaid to the insured by the intermediary.

10 **15. Restraining orders**—(1) The Court may, on the application of a person referred to in **subsection (2)** of this section, make an order restraining an insurer that is carrying on insurance business in New Zealand in contravention of **section 4** of this Act, from carrying on insurance business in New Zealand.

(2) The persons who may make an application are—

- 15 (a) The Registrar:
(b) Any other insurer:
(c) A director of the insurer:
(d) A person who is insured under a contract of insurance with the insurer:
(e) The Insurance Council:
20 (f) With the leave of the Court, any other person.

(3) If the Court makes an order under **subsection (1)** of this section, it may make any other ancillary order it thinks fit.

25 (4) The Court may, on the application of the insurer, rescind an order made under **subsection (1)** of this section if it is satisfied that the insurer has taken steps to comply and is complying with **section 4** of this Act.

30 **16. Approval of rating agency**—(1) Subject to **subsection (2)** of this section, the Registrar shall, on the recommendation of the Insurance Council, approve a person or organisation as an approved agency for the purposes of this Act.

(2) An approval under this section shall be for a term not exceeding 3 years.

(3) The power conferred by **subsection (1)** of this section is exercisable—

- 35 (a) On or before or after the date on which this Act comes into force; or
(b) From time to time thereafter on or before or after the expiry or termination of an existing approval.

40 (4) Before approving a person or organisation as an approved agency for the purposes of this Act, the Registrar must be satisfied—

- (a) That the person or organisation has entered into a deed of agreement with the Insurance Council as to the fees,

or the methods of determining the fees, to be charged to insurers or classes of insurers for rating insurers under this Act; and

(b) That insurers that are required to have ratings under this Act but that are not members of the Council have been consulted about the terms of the agreement. 5

(5) The Registrar shall keep a copy of the agreement available for inspection, without fee, by any insurer that is required to have a rating under **section 4** of this Act.

17. Revocation of approval—(1) Subject to **subsection (2)** of this section, the Registrar may, if satisfied that an approved agency has, without sufficient cause, failed to provide a current rating for an insurer under **section 4** of this Act, by notice in writing, terminate the approval of that agency. 10

(2) The Registrar shall not revoke the approval of an approved agency unless he or she first gives the agency notice in writing that he or she is considering revoking the approval, together with reasons, and gives the agency a proper opportunity to make representations to him or her. 15

18. Agreement to govern rating of insurers—The agreement referred to in **section 16** of this Act shall set out in a Schedule to the agreement the terms and conditions relating to fees, or the methods of determining the fees, payable for providing a rating by the approved agency and may set out in that Schedule other terms and conditions applying to the provision of ratings by the approved agency, and those terms and conditions shall be deemed to be terms and conditions of every agreement entered into by an insurer and the approved agency. 20 25

19. Registers—(1) The Registrar shall cause to be kept in such office or offices of the Registrar as he or she determines such registers as are necessary for the purposes of this Part of this Act. 30

(2) Part XX of the Companies Act 1993 shall apply, with such modifications as may be necessary, in respect of— 35

- (a) Every register kept under **subsection (1)** of this section; and
- (b) The registration and inspection of documents under this Part of this Act.

20. Defences—(1) It is a defence to an insurer or a director charged with an offence against **section 4 (3)** of this Act if the insurer or the director proves that, by reason of the application 40

of **section 8 (1)** of this Act to the insurer, the insurer was not required to comply with that section at the time of the alleged offence.

5 (2) It is a defence to a director charged with an offence in relation to a failure by an insurer to comply with a requirement of this Part of this Act if the director proves that—

- (a) The insurer took all reasonable and proper steps to ensure that the requirement would be complied with; or
- 10 (b) He or she took all reasonable and proper steps to ensure that the insurer complied with the requirement; or
- (c) In the circumstances, he or she could not reasonably have been expected to ensure that the insurer complied with the requirement.

15 **21. No contracting out**—This Part of this Act has effect despite—

- (a) Any provision to the contrary in any agreement; and
- (b) The proper law of any contract of insurance being the law of a country other than New Zealand.

20 **22. Review of this Part and Insurance Companies' Deposits Act 1953**—The Minister shall, within 6 months after the expiry of the period of 2 years following the first approval of an approved agency under **section 16** of this Act, appoint such person or persons as the Minister thinks fit to review the operation of this Part of this Act and the Insurance Companies' 25 Deposits Act 1953.

23. Fees—The Governor-General may from time to time, by Order in Council,—

- 30 (a) Prescribe the fees payable under **section 5 (2)** of this Act on the delivery of a certified copy of a rating to the Registrar for registration;
- (b) Prescribe amounts payable under **section 5 (4)** of this Act to the Registrar by way of penalty for any failure to deliver a certified copy of a rating to the Registrar within the time prescribed by **section 5 (1)** of this Act.

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PART II

INSPECTION AND LIQUIDATION OF INSURANCE COMPANIES

40 **24. Registrar's powers of inspection**—(1) The Registrar or a person authorised by the Registrar may, for the purpose of determining whether an insurance company is unable to pay its debts, do any of the following:

- (a) Require the company or an officer of the company to produce for inspection relevant documents within the possession or control of the company or that officer; or
 - (b) Require any other person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person's possession or control; or 5
 - (c) Inspect and take copies of relevant documents; or
 - (d) Take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies of them. 10
- (2) Nothing in this section limits or affects the Inland Revenue Department Act 1974 or the Statistics Act 1975. 15
- (3) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power conferred by **subsection (1)** of this section.
- (4) A person, not being a company, who fails to comply with a requirement of **paragraph (a)** or **paragraph (b)** of **subsection (1)** of this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. 20
- (5) If an insurance company fails to comply with a requirement of **paragraph (a)** of **subsection (1)** of this section or a company fails to comply with a requirement of **paragraph (b)** of that subsection, as the case may be,— 25
- (a) The company commits an offence and is liable on summary conviction to a fine not exceeding \$10,000:
 - (b) Every director of the company commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 unless the director proves that— 30
 - (i) The company took all reasonable and proper steps to ensure that the requirement would be complied with; or
 - (ii) He or she took all reasonable steps to ensure that the company complied with the requirement; or 35
 - (iii) In the circumstances, he or she could not reasonably have been expected to take steps to ensure that the company complied with the requirement. 40
- (6) Every person who contravenes **subsection (3)** of this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

(7) In this section “relevant document”, in relation to an insurance company, means a document that contains information relating to—

- (a) The company; or
- 5 (b) Money or other property that is, or has been, managed, supervised, controlled or held in trust by or for the company.

Cf. 1993, No. 105, s. 365

25. Disclosure of information and reports—(1) A person
10 authorised by the Registrar for the purposes of **section 24** of this Act who has—

- (a) Obtained a document or information in the course of making an inspection under that section; or
- (b) Prepared a report in relation to an inspection under that
15 section—

must, if directed to do so by the Registrar, give the document, information, or report to—

- (c) The Minister; or
- (d) The Secretary for Justice; or
- 20 (e) Any person authorised by the Registrar to receive the document, information, or report for the purposes of this Part of this Act or in connection with the exercise of powers conferred by this Part of this Act; or
- (f) Any person authorised by the Registrar to receive the
25 document, information, or report for the purposes of detecting offences against any Act.

(2) A person authorised by the Registrar for the purposes of **section 24** of this Act who has—

- (a) Obtained a document or information in the course of
30 making an inspection under that section; or
- (b) Prepared a report in relation to an inspection under that section—

35 must give the document, information, or report to the Registrar, a Deputy Registrar of Companies, a District Registrar of Companies, or an Assistant Registrar of Companies, when directed to do so by any person holding any of those offices.

(3) A person authorised by the Registrar for the purposes of **section 24** of this Act who has—

- (a) Obtained a document or information in the course of
40 making an inspection under that section; or
- (b) Prepared a report in relation to an inspection under that section—

must not disclose that document, information, or report except—

- (c) In accordance with **subsection (1)** or **subsection (2)** of this section; or
 - (d) Subject to the approval of the Registrar, with the consent of the person to whom it relates; or
 - (e) Subject to the approval of the Registrar, for the purposes of this Part of this Act or in connection with the exercise of powers conferred by this Part of this Act; or
 - (f) To the extent that the information, or information contained in the document or report, is available under any Act or in a public document; or
 - (g) In the course of criminal proceedings; or
 - (h) Subject to the approval of the Registrar, for the purpose of detecting offences against any Act.
- (4) A person who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Cf. 1993, No. 105, s. 366

26. Application of Official Information Act 1982 and Privacy Act 1993—(1) This section applies to the Minister, the Secretary for Justice, the Registrar, a Deputy Registrar of Companies, a District Registrar of Companies, and an Assistant Registrar of Companies.

(2) Notwithstanding the Official Information Act 1982 or the Privacy Act 1993, a person to whom this section applies may refuse to disclose a document, information, or report in his or her possession obtained in making, or acquired as a result of, an inspection under **section 24** of this Act, until the purpose for which the inspection is carried out has been satisfied.

(3) Notwithstanding the Official Information Act 1982, where a person requests disclosure of whether an inspection under **section 24** of this Act is being, or is proposed to be, or has been carried out, as the case may be, no person to whom this section applies is required to disclose that information under the Official Information Act 1982 unless—

- (a) The disclosure of that information would not be likely to prejudice the commercial position of any person; and
- (b) There is no other good reason for withholding that information under that Act.

Cf. 1993, No. 105, s. 367

27. Appeals from decisions under section 26—(1) A person who is aggrieved by a refusal to disclose a document, information, or report under **section 26** of this Act may appeal to

the Court within 15 working days after being notified of that refusal, or within such further time as the Court may allow.

(2) On hearing the appeal, the Court may confirm the refusal, or give such directions, or make such determination in the matter as the Court thinks fit.

Cf. 1993, No. 105, s. 368

28. Inspector's report admissible in liquidation proceedings—Notwithstanding any other Act or rule of law, a report prepared by a person in relation to an inspection carried out by him or her under section 24 of this Act is admissible in evidence at the hearing of an application to the Court under section 31 of this Act to put an insurance company into liquidation.

29. Appeals against exercise of powers under section 24—(1) A person who is aggrieved by the exercise by the Registrar or a person appointed by the Registrar of a power conferred by section 24 of this Act may appeal to the High Court within 21 days after the date on which the power was exercised or within such further time as the Court may allow.

(2) On hearing the appeal, the Court may approve the exercise of the power or may give such directions or make such determination in the matter as the Court thinks fit.

Cf. 1993, No. 105, s. 370

30. Exercise of powers under section 24 not affected by appeal—(1) Subject to subsection (2) of this section, but notwithstanding any other provision of any Act or any rule of law, where a person appeals or applies to the Court in relation to an act or decision of the Registrar or a person authorised by the Registrar under section 24 of this Act, until a decision on the appeal or application is given,—

(a) The Registrar, or that person, may continue to exercise the powers under that section as if no such appeal or application had been made; and

(b) No person is excused from fulfilling an obligation under that section by reason of that appeal or application.

(2) If the appeal or application is allowed or granted, as the case may be,—

(a) The Registrar must ensure that, forthwith after the decision of the Court is given, any copy of a document taken or retained by the Registrar, or by a person authorised by the Registrar in respect of that act or decision, is destroyed; and

- (b) No information acquired under that section in relation to that act or decision is admissible in evidence in any proceedings unless the Court hearing the proceedings in which it is sought to adduce the evidence is satisfied it was not obtained unfairly. 5

Cf. 1993, No. 105, s. 371

31. Liquidation of insurance companies—(1) The High Court may, on the application of the Registrar, if it is satisfied that an insurance company is unable to pay its debts, put the company into liquidation. 10

(2) Part VI of the Companies Act 1955 applies to the liquidation of an insurance company that is a company within the meaning of section 2 of that Act.

(3) Part XVI of the Companies Act 1993 applies to the liquidation of an insurance company that is a company within the meaning of section 2 of that Act. 15

(4) In the case of an insurance company other than an insurance company of the kind referred to in **subsection (2)** or **subsection (3)** of this section, subject to **subsection (5)** of this section, Part XVI of the Companies Act 1993 applies to the liquidation of the company as if references to— 20

- (a) A company included a reference to an insurance company; and
- (b) A director included a reference to a person occupying the position of director by whatever name called; and 25
- (c) Shareholders, or to persons entitled to surplus assets under the constitution of a company and that Act, were references to such persons as the Court may determine to be justly entitled to any surplus assets after the satisfaction of the claims of all the creditors. 30

(5) The Court may—

- (a) Appoint the liquidator on such terms and conditions as it thinks fit;
- (b) Limit or exclude the exercise by the liquidator of any of the powers conferred by Part XVI of the Companies Act 1993. 35

32. Meaning of “inability to pay debts”—(1) For the purposes of **section 31** of this Act—

- (a) Sections 287 and 288 of the Companies Act 1993 apply for the purpose of determining whether an insurance company that is a company within the meaning of section 2 of that Act is unable to pay its debts: 40

(b) Sections 261 and 262 of the Companies Act 1955 apply for the purpose of determining whether an insurance company that is a company within the meaning of section 2 of that Act is unable to pay its debts.

5 (2) For the purposes of **section 31** of this Act, an insurance company that is not a company within the meaning of section 2 of the Companies Act 1993 or section 2 of the Companies Act 1955 is unable to pay its debts—

(a) If—

10 (i) A creditor who is owed an amount exceeding \$100 by the company has served on the company a demand for payment of that amount by leaving it at the principal office of the company in New Zealand, or delivering it to the secretary, or a director,
15 manager or principal officer of the company; and

(ii) The company has for 3 weeks after the demand was served on it failed to pay the amount due or secure the payment of it or compound for it to the satisfaction of the creditor; or

20 (b) If—

(i) An action or proceeding has been commenced against a member of the company for the payment of an amount owing by the company or that member in his or her capacity as a member; and

25 (ii) Notice in writing of the action or proceeding has been served on the company by leaving it at its principal place of business in New Zealand or by delivering it to the secretary or a director or principal officer of the company or serving it on the company in such manner as the Court may approve or direct; and

30 (iii) The company has not, within 10 days after the notice was served on it, paid or secured the debt, or compounded for it or had the action or proceeding stayed or indemnified the member for the amount of any judgment that may be entered against him or her and any costs, damages, and expenses that may be incurred by him or her in the action or proceeding; or

35 (c) If execution or other process issued on a judgment, decree, or order obtained in a court in favour of a creditor against the company, or a member of it, or a person authorised to be sued on behalf of the company, is returned unsatisfied; or

40 (d) If it is proved to the satisfaction of the Court that the
45 company is unable to pay its debts, and in

determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

(3) Without limiting **subsection (1)** or **subsection (2)** of this section, evidence that an insurance company was unable to pay its debts at the end of the financial year to which the most recent balance sheet of the company deposited under the Life Insurance Act 1908, or the Insurance Companies' Deposits Act 1953, as the case may be, relates, is evidence that the company continues to be unable to pay its debts unless the contrary is proved.

Cf. 1908, No. 89, s. 17c; 1993, No. 117, s. 2

33. Application of other enactments not affected—
Nothing in this Part of this Act prevents—

- (a) An insurance company that is a company within the meaning of section 2 of the Companies Act 1955 being put into liquidation under that Act: 15
- (b) An insurance company that is a company within the meaning of section 2 of the Companies Act 1993 being put into liquidation under that Act: 20
- (c) The appointment of a liquidator of an insurance company that is an association within the meaning of **section 17A** of the Judicature Act 1908.

34. Transitional provisions—(1) Nothing in this Part of this Act applies to or affects— 25

- (a) Any notice given to an insurance company under section 422 of the Companies Act 1955 or any investigation of an insurance company under that section commenced before the commencement of this Act, and sections 421 and 423 of that Act shall apply as if the references in those sections to the winding up of an insurance company were references to putting the company into liquidation: 30
 - (b) The winding up of an insurance company commenced before the commencement of this Act or anything done by or in relation to an insurance company under Part VI of the Companies Act 1955 before the commencement of this Act. 35
- (2) In the liquidation of an insurance company under Part VI of the Companies Act 1955 nothing in any of sections 266 to 273 of that Act shall apply in relation to any transaction entered into by a company, or any matter that arose, before the commencement of this Act, but sections 309, 310, 311, 40

311A, 311B, and 311C of the Companies Act 1955, as in force before the commencement of this Act, shall continue to apply in respect of that transaction or matter as if this Act had not been passed.

- 5 (3) In the liquidation of an insurance company under Part XVI of the Companies Act 1993 nothing in any of sections 292 to 299 of that Act shall apply in relation to any transaction entered into by a company, or any matter that arose, before the commencement of this Act, but sections 309, 10 310, 311, 311A, 311B, and 311C of the Companies Act 1955, as in force before the commencement of this Act, shall continue to apply in respect of that transaction or matter as if this Act had not been passed.

PART III

MISCELLANEOUS

15

35. Application for shares in, or membership of, company not to be contained in proposal for insurance—(1) A form of proposal for insurance that contains or purports to be an application for shares in or membership of a company must not be issued by or on behalf of the company.

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(2) Where any person makes a proposal for insurance to a company, the company must not allot shares to that person or admit that person to the membership of the company without first receiving an application for shares or membership that is contained in a document separate from the proposal for insurance.

25

(3) If a company contravenes this section—

(a) The company commits an offence and is liable on summary conviction to a fine not exceeding \$10,000;

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(b) Every director of the company commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 unless the director shows that—

(i) The company took all reasonable and proper steps to ensure that the requirements of this section would be complied with; or

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(ii) He or she took all reasonable steps to ensure that the company complied with the requirements of this section; or

(iii) In the circumstances, he or she could not reasonably have been expected to take steps to ensure that the company complied with the requirements of this section.

40

(4) Nothing in this section affects the validity of a policy of insurance or of an allotment of shares or an admission to membership of a company.

Cf. 1955, No. 63, s. 413

36. Part XIII of Companies Act 1955 repealed—(1) Part 5
XIII of the Companies Act 1955 and the Twelfth Schedule to
that Act (as substituted by section 3 (2) of the Companies
Amendment Act 1983) are hereby repealed.

(2) Sections 3 to 8 of, and the Schedule to, the Companies
Amendment Act 1983 are hereby consequentially repealed. 10