

**Reprint  
as at 7 March 2012**



**Insurance Companies (Ratings and  
Inspections) Act 1994**

Public Act    1994 No 117  
Date of assent    25 November 1994  
Commencement    see section 1(2)

Insurance Companies (Ratings and Inspections) Act 1994: repealed, on 7 March 2012, by section 240(b) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Ministry of Economic Development.**

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**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**

**1 Short Title and commencement**

- (1) This Act may be cited as the Insurance Companies (Ratings and Inspections) Act 1994.
- (2) This Act shall come into force on the day on which it receives the Royal assent.

**2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—  
**approved agency** means a person or organisation for the time being approved as an approved agency under section 17  
**arrange** in relation to a contract of insurance, includes negotiate, solicit, or procure any such contract  
**company** has the same meaning as in—
  - (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 of the Companies Act 1993  
**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**court** means the High Court of New Zealand; and includes a Judge of that court  
**credit watch warning** means any word, expression, or symbol used by an agency to indicate that the agency has an insurer under consideration with a view to a possible downgrading in a rating given to the insurer by the agency  
**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

**director** means,—

- (a) in relation to a company, a person occupying the position of a director of the company by whatever name called:
- (b) in relation to a partnership, other than a special partnership or limited partnership, a partner:
- (c) in relation to a special partnership or limited partnership, any general partner:
- (d) in relation to a body corporate or unincorporate, other than a company or a partnership or a special partnership or limited partnership, a person occupying a position in the body that is comparable with that of a director of a company:
- (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

**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

**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

**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 1 or more insurers or as the agent of the insured

**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

**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 includes—

- (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

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**rating** means an assessment represented by a letter or a symbol or a number or by a combination of any of them, as the case may be, together with a word or words or an expression that indicates the meaning thereof, adopted by a person or organisation of an insurer's ability to pay—

- (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

**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
- (b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and
- (c) if 1 January in any year falls on a Friday, the following Monday; and
- (d) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

- (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 incorporated or formed in New Zealand; or
  - (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.
- (3) A person does not carry on insurance business in New Zealand within the meaning of subsection (2) by reason only of the fact that the person is an underwriting member of the society known as Lloyds of London.
- (4) Where the last day of the period prescribed under section 6 for delivering a document under that section to the Registrar falls on the anniversary of the province in which the appropriate office determined by the Registrar is situated, the document may be delivered on the next working day.
- (5) For the purposes of subsection (2)(c), a person is ordinarily resident in New Zealand if that person—
- (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 New Zealand during that period.

Section 2(1) **director** paragraph (b): amended, on 2 May 2008, by section 121(2) of the Limited Partnerships Act 2008 (2008 No 1).

Section 2(1) **director** paragraph (c): amended, on 2 May 2008, by section 121(2) of the Limited Partnerships Act 2008 (2008 No 1).

Section 2(1) **director** paragraph (d): amended, on 2 May 2008, by section 121(2) of the Limited Partnerships Act 2008 (2008 No 1).

Section 2(1) **Minister**: substituted, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

### 3 Public notice

- (1) Where, pursuant to Part 1, notice must be given of any matter affecting an insurer, not being an insurer to which subsection

- (2) applies, that notice must be given by publishing notice of the matter—
- (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
    - (ii) if the insurer has more than 1 place of business, the insurer's principal place of business.
- (2) Where, pursuant to Part 1, 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—
- (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
    - (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.
- (3) For the purposes of this section, **newspaper** means a newspaper that is usually published on every working day.

## **Part 1**

### **Rating of insurance companies**

#### **4 Application**

- (1) Section 5 applies to every insurer that carries on insurance business in New Zealand, but does not apply—
- (a) in relation to the business of life insurance carried on by the insurer;
  - (b) to an insurer that carries on, or did at all material times carry on, insurance business only with members of a group of companies of which the insurer is, or was, also a member.
- (2) For the purposes of subsection (1),—
- group of companies** means a holding company and its subsidiaries

**holding company** has the same meaning as in sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be

**subsidiary** has the same meaning as in sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be.

## **5 Insurers to have current rating**

- (1) Subject to section 9, 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.
- (2) A rating given to an insurer by an agency at a time when the agency was an approved agency does not cease to be a rating from an approved agency for the purposes of this Act by reason of the fact that the approval of that agency has expired or has been terminated under section 18.
- (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.

## **6 Registration of ratings**

- (1) Every insurer must, within 5 working days after receiving notice in writing that a rating has been given by an approved agency in respect of that insurer, deliver to the Registrar for registration—
  - (a) a certificate by the approved agency of the rating that also states the date on which the rating was given:
  - (b) if it has not previously been delivered for registration, a copy of the rating scale of which the rating referred to in paragraph (a) forms part:
  - (c) if it has not previously been delivered for registration, an explanation by the approved agency of the rating scale referred to in paragraph (b).



- (2) Every insurer must, within 5 working days after receiving notice in writing that a credit watch warning has been given by an approved agency in respect of that insurer, deliver to the Registrar for registration a certificate by the approved agency of the credit watch warning that also states the date on which it was given and the reasons for it.
- (3) The insurer must pay the prescribed registration fee.
- (4) Without limiting subsection (5), where an insurer delivers a document to the Registrar for registration under this section after the expiry of the period referred to in subsection (1) or subsection (2), as the case may be, the Registrar may require the insurer to pay by way of penalty, in addition to the prescribed fee, such amount as may be prescribed.
- (5) Where an insurer fails to comply with subsection (1) or subsection (2), the insurer and every director of the insurer commits an offence and is liable on summary conviction to a fine not exceeding \$50,000.

#### **7 Inspection of current ratings**

The documents registered under section 6 shall be open to inspection by any person on payment of such fee as may be prescribed.

#### **8 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) 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), 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), the insurer and every director of the insurer commits an offence and is liable on summary conviction to a fine not exceeding \$50,000.

**9 Certain insurers not required to have current rating**

- (1) Notwithstanding section 5, an insurer is not required to have a current rating if—
- (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
  - (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.
- (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 5.
- (3) A notice under this section takes effect—
- (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.

**10 Disclosure of current rating to insured**

- (1) Subject to subsection (5), an insurer that is required to comply with section 5, must, before entering into or renewing a contract of insurance, not being a contract solely of life insurance, disclose to the insured in writing—
- (a) the insurer's current rating and the date on which it was given; and
  - (b) the rating scale of which the rating referred to in paragraph (a) forms part; and
  - (c) any credit watch warning relating to the rating referred to in paragraph (a), together with the date on which it was given and the reasons for it.

- (2) 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 the matters referred to in subsection (1) in relation to the proposed insurer, the insurer is deemed to have complied with that subsection.
- (3) Where it is not reasonably practicable for an insurer or an intermediary, as the case may be, to disclose the matters referred to in subsection (1) in writing and before the contract is entered into or renewed, that subsection shall be deemed to have been complied with if—
  - (a) the matters referred to in that subsection (other than the rating scale) are disclosed to the insured orally before the contract is entered into or renewed; and
  - (b) the matters referred to in that subsection are disclosed to the insured in writing as soon as it becomes practicable to do so.
- (4) For the purposes of this section, a matter is not to be taken as having been disclosed unless it is disclosed clearly and prominently.
- (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 the date that is 12 months after the coming into force of this Act.

#### **11 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 10 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), 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.

**12 Disclosure by insurers not required to be rated**

- (1) Subject to subsection (3), 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) 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).
- (3) 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) 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.
- (4) For the purposes of this section, a matter is not to be taken as having been disclosed unless it is disclosed clearly and prominently.
- (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.

**13 Cancellation of insurance if section 12 not complied with**

- (1) Where a contract of insurance is entered into or renewed, as the case may be, and the provisions of section 12 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), 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.

**14 Disclosure by insurance intermediaries effecting insurance outside New Zealand**

- (1) Subject to subsections (2) and (3), 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 business in New Zealand, the insurance intermediary must, before the contract is entered into or renewed,—
- (a) disclose to the insured in writing—
- (i) 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 date on which it was given; and
  - (ii) the rating scale of which the rating referred to in subparagraph (i) forms part; and
  - (iii) any credit watch warning relating to the rating given under subparagraph (i), together with the date on which it was given and the reasons for it;
- or
- (b) disclose to the insured in writing that no such rating is available and the reasons for the fact that it is not available.
- (2) Where it is not reasonably practicable for an insurance intermediary to disclose the matters referred to in subsection (1) in writing and before the contract is entered into or renewed, that subsection shall be deemed to have been complied with if,—
- (a) in any case to which paragraph (a) of that subsection applies,—
- (i) the matters referred to in that paragraph (other than the rating scale) are disclosed to the insured

- orally before the contract is entered into or renewed; and
- (ii) the matters referred to in that paragraph are disclosed to the insured in writing as soon as it becomes practicable to do so; or
- (b) in any case to which paragraph (b) of that subsection applies,—
- (i) the fact that no rating is available is disclosed to the insured orally before the contract is entered into or renewed; and
  - (ii) the matters referred to in that paragraph are disclosed in writing as soon as it becomes practicable to do so.
- (3) An insurance intermediary who arranges contracts of insurance or renews contracts of insurance in respect of the same risk with 2 or more insurers, is not required to comply with subsection (1) if, before the contracts are entered into or renewed, the insurance intermediary discloses to the insured in writing that, on account of the number of insurers, the matters referred to in that subsection are not being disclosed.
- (4) For the purposes of this section, a matter is not to be taken as having been disclosed unless it is disclosed clearly and prominently.

**15 Cancellation of insurance if section 14 not complied with**

- (1) Where a contract of insurance is entered into or renewed, as the case may be, and the provisions of section 14 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), 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 the intermediary that relate to that period must be repaid to the insured by the intermediary.

## **16 Restraining orders**

- (1) The court may, on the application of a person referred to in subsection (2), make an order restraining an insurer that is carrying on insurance business in New Zealand in contravention of section 5, from entering into or renewing any contract of insurance in New Zealand.
- (2) The persons who may make an application are—
  - (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:
  - (f) with the leave of the court, any other person.
- (3) If the court makes an order under subsection (1), it may make any other ancillary order it thinks fit.
- (4) The court may, on the application of the insurer, rescind an order made under subsection (1) if it is satisfied that the insurer has taken steps to comply and is complying with section 5.

## **17 Approval of rating agency**

- (1) Subject to 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 and more than 1 person or organisation may be so recommended or approved.
- (2) An approval under this section shall be for a term not exceeding 3 years.
- (3) The power conferred by subsection (1) is exercisable—
  - (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.
- (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 method

- to be adopted and the criteria to be used in determining ratings to be given to 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) 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 5.

### **18 Revocation of approval**

- (1) Subject to subsection (2), the Registrar may, if satisfied that an approved agency has, without sufficient cause, failed to provide a current rating for an insurer under section 5, by notice in writing, terminate the approval of that agency.
- (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.

### **19 Agreement to govern ratings**

- (1) Every agreement referred to in section 17—
- (a) must set out in a schedule to the agreement the method to be adopted and the criteria to be used by the approved agency in determining ratings to be given to insurers under this Act; and
- (b) may set out in that schedule terms applying to the provision of ratings by the approved agency.
- (2) The provisions of every such schedule shall be deemed to form part of every agreement entered into by an insurer and an approved agency and, in the event of any inconsistency between the provisions of the schedule and other terms of the agreement, the provisions of the schedule prevail.

### **20 Advertising of ratings**

- (1) No advertisement that refers to the rating, or to any part of the rating, of an insurer shall be distributed unless the advertisement also states prominently—



- (a) the rating; and
  - (b) the name of the agency by which the rating was given and whether the agency is an approved agency; and
  - (c) the date on which the rating was given; and
  - (d) any credit watch warning relating to the rating; and
  - (e) that any scale of which the rating forms part is available for inspection at any office in New Zealand of the insurer or, if the insurer does not carry on insurance business in New Zealand, at any office in New Zealand of an insurance intermediary named in the advertisement.
- (2) Where an advertisement is distributed in contravention of subsection (1), the insurer and every director of the insurer commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (3) For the purposes of this section, an advertisement is distributed if it is communicated to the public by newspaper, magazine, brochure, pamphlet, notice, circular, radio or television broadcast, cinematograph film, computer network, or other means.

## **21 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.
- (2) Part 20 of the Companies Act 1993 shall apply, with such modifications as may be necessary, in respect of—
- (a) every register kept under subsection (1); and
  - (b) the registration and inspection of documents under this Part.

## **22 Defences**

- (1) It is a defence to an insurer or a director charged with an offence against section 5(3) if the insurer or the director proves that, by reason of the application of section 9(1) to the insurer, the insurer was not required to comply with that section at the time of the alleged offence.
- (2) It is a defence to a director charged with an offence against section 5(3) or section 6(5) or section 8(4), as the case may be, in

relation to a failure by an insurer to comply with a requirement of the applicable section, if the director proves that—

- (a) the insurer took all reasonable and proper steps to comply; or
  - (b) he or she took all reasonable and proper steps to ensure that the insurer complied; or
  - (c) in the circumstances, he or she could not reasonably have been expected to ensure that the insurer complied.
- (3) It is a defence to an insurer or a director, as the case may be, charged with an offence against section 20(2) if the insurer or the director proves that—
- (a) the advertisement was distributed without the knowledge of the insurer or the director; or
  - (b) in all the circumstances, the insurer or director should be excused from liability.

### **23 No contracting out**

This Part 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.

### **24 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 17, appoint such person or persons as the Minister thinks fit to review the operation of this Part and the Insurance Companies' Deposits Act 1953.

### **25 Regulations**

The Governor-General may from time to time, by Order in Council, make regulations—

- (a) prescribing the fee payable under subsection (3) of section 6 on the delivery of the documents referred to in subsection (1) or subsection (2) of that section to the Registrar for registration;
- (b) prescribing the fee payable under section 7 for the inspection of documents under that section:

- (c) prescribing amounts payable under subsection (4) of section 6 to the Registrar by way of penalty for any failure to deliver to the Registrar the documents referred to in subsection (1) or subsection (2) of that section within the prescribed time;
- (d) prescribing the form of notice under subsection (1)(b) or subsection (2) of section 9.

## **Part 2**

### **Inspection of insurance companies**

#### **26 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 employee 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
  - (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.
- (2) Nothing in this section limits or affects the Inland Revenue Department Act 1974 or the Statistics Act 1975.
- (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).
- (4) A person, not being a company, who fails to comply with a requirement of paragraph (a) or paragraph (b) of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (5) If an insurance company fails to comply with a requirement of paragraph (a) of subsection (1) or a company fails to comply

with a requirement of paragraph (b) of that subsection, as the case may be,—

- (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—
    - (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
    - (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.
- (6) Every person who contravenes subsection (3) 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
  - (b) money or other property that is, or has been, managed, supervised, controlled or held in trust by or for the company.

Compare: 1993 No 105 s 365

## **27 Disclosure of information and reports**

- (1) A person authorised by the Registrar for the purposes of section 26 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 section—
- must, if directed to do so by the Registrar, give the document, information, or report to—
- (c) the Minister; or

- (d) the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act; or
  - (e) any person authorised by the Registrar to receive the document, information, or report for the purposes of this Part or in connection with the exercise of powers conferred by this Part; or
  - (f) a liquidator for the purposes of the liquidation of the company; or
  - (g) any person authorised by the Registrar to receive the 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 26 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 section—
- 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 26 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 section—
- must not disclose that document, information, or report except—
- (c) in accordance with subsection (1) or subsection (2); 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 or in connection with the exercise of powers conferred by this Part; 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.

Compare: 1993 No 105 s 366

Section 27(1)(d): substituted, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

## **28 Application of Official Information Act 1982 and Privacy Act 1993**

- (1) This section applies to—
- (a) the Minister; and
  - (b) the chief executive of the department of State that is for the time being responsible for the administration of this Act; and
  - (c) the Registrar; and
  - (d) a Deputy Registrar of Companies; and
  - (e) a District Registrar of Companies; and
  - (f) 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 26, 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 26 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.

Compare: 1993 No 105 s 367

Section 28(1): substituted, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

**29 Appeals from decisions under section 28**

- (1) A person who is aggrieved by a refusal to disclose a document, information, or report under section 28 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.

Compare: 1993 No 105 s 368

**30 Inspector's report admissible in liquidation proceedings**

- (1) 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 26 is admissible in evidence at the hearing of an application for the appointment of a liquidator of an insurance company made,—
  - (a) in the case of a company within the meaning of section 2 of the Companies Act 1955, under section 211 of that Act; or
  - (b) in the case of a company within the meaning of section 2 of the Companies Act 1993, under section 241 of that Act; or
  - (c) in the case of an overseas company within the meaning of section 2 of the Companies Act 1993, under section 342 of that Act; or
  - (d) in the case of an association, under section 17A of the Judicature Act 1908.
- (2) At the hearing of the application, evidence that the insurance company was unable to pay its debts at the end of the financial year to which the most recent statement of financial position 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.

Section 30(2): amended, on 1 October 1997, pursuant to section 6(1) of the Financial Reporting Amendment Act 1997 (1997 No 17).

**31 Appeals against exercise of powers under section 26**

- (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 26 may appeal to the High Court within 15 working 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.

Compare: 1993 No 105 s 370

**32 Exercise of powers under section 26 not affected by appeal**

- (1) Subject to subsection (2), 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 the exercise by the Registrar or a person authorised by the Registrar of a power conferred by section 26, 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 the exercise of that power, is destroyed; and
- (b) no information acquired under that section in relation to the exercise of that power 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.

Compare: 1993 No 105 s 371



### Part 3 Miscellaneous

#### 33 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.
- (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.
- (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;
  - (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
    - (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.
- (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.
- (5) In this section, the term **company** does not include an overseas company within the meaning of section 2(1) of the Companies Act 1993.

Compare: 1955 No 63 s 413

#### 34 Part 13 of Companies Act 1955 repealed *Amendment(s) incorporated in the Act(s).*

**35 Transitional provisions**

- (1) The repeal of Part 13 of the Companies Act 1955 by section 34 of this Act does not affect—
    - (a) any notice given to an insurance company under section 422 of that Act, or any investigation of an insurance company commenced under that section, before the commencement of this Act, and sections 421 and 423 of that Act shall apply as if references in those sections to the winding up of an insurance company were references to putting the company into liquidation:
    - (b) the winding up of an insurance company under that Part commenced before the commencement of this Act.
  - (2) In the liquidation of an insurance company under Part 6 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 the company, or any matter that arose, before 1 July 1994, but sections 309, 310, 311, 311A, 311B, and 311C of that Act, as in force before that date, shall continue to apply in respect of that transaction or matter as if this Act had not been passed.
  - (3) In the liquidation of an insurance company under Part 16 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 the company, or any matter that arose, before 1 July 1994, but sections 309, 310, 311, 311A, 311B, and 311C of the Companies Act 1955, as in force before that date, shall continue to apply in respect of that transaction or matter as if this Act had not been passed.
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## **Contents**

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## **Notes**

### **1 *General***

This is a reprint of the Insurance Companies (Ratings and Inspections) Act 1994. It incorporates all the amendments to the Act as at 7 March 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

### **2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint  
(most recent first)***

Insurance (Prudential Supervision) Act 2010 (2010 No 111): section 240(b)

Limited Partnerships Act 2008 (2008 No 1): section 121(2)

Financial Reporting Amendment Act 1997 (1997 No 17): section 6(1)

Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(3)