

Hon. Mr. Nash

INSURANCE COMPANIES

Title.	ANALYSIS
1. Short Title.	9. Deposits to be security for certain liabilities.
PART I	10. Repeal.
INSURANCE COMPANIES' DEPOSITS.	<i>General.</i>
2. Part of Insurance Companies' Deposits Act, 1921-22.	11. Deposits by companies at present in business may be of securities.
3. Interpretation.	12. Income from securities.
<i>Deposits by Local Companies.</i>	13. Provisions of principal Act to apply to deposits.
4. Deposits to be made by new local insurance companies.	14. Statements to be supplied annually.
5. Deposits to be made by existing local insurance companies.	15. Penalty for false statement.
<i>Deposits in connection with Motor-vehicles (Third-party Risks) Business.</i>	PART II.
6. Interpretation.	WINDING-UP OF INSURANCE COMPANIES.
7. Deposits by companies undertaking motor-vehicles (third-party risks) business for first time.	16. Interpretation.
8. Deposits by companies at present undertaking motor-vehicles (third-party risks) business.	17. Power of Minister of Justice to petition on ground of insolvency.
	18. Provisions as to insurance companies of doubtful solvency.
	19. Supplemental provisions. Schedule.

A BILL INTITULED

AN ACT to amend the Insurance Companies' Deposits Act, 1921-22, and to make Better Provision for the Winding-up of Insolvent Insurance Companies. Title.

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

Short Title.

1. This Act may be cited as the Insurance Companies Act, 1940.

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PART I.

INSURANCE COMPANIES' DEPOSITS.

Part of
Insurance
Companies'
Deposits
Act, 1921-22.

See Reprint
of Statutes,
Vol. IV, p. 165

Interpretation.

2. This Part of this Act shall be read together with and deemed part of the Insurance Companies' Deposits Act, 1921-22 (hereinafter in this Part of this Act referred to as the principal Act).

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3. For the purposes of the principal Act, unless the context otherwise requires,—

“Financial year”, in relation to any company or person, means a year ending on the date of the annual balance of the accounts of the company or person, or, if there is no annual balance, a year ending on the thirty-first day of December:

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“Local company” means a company, as defined by the principal Act, established or incorporated in, or having its chief office in, New Zealand, but does not include a Mutual Fire Insurance Association incorporated under the Mutual Fire Insurance Act, 1908:

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Ibid., p. 22

Mutual Fire Insurance Act, 1908:

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Struck out.

“Premium income” means the gross income earned in New Zealand from premiums, without making any allowance or deduction for reinsurances, commission, or other agency charges.

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New.

“Premium income” means the gross income earned in New Zealand from premiums after deducting any rebates or refunds allowed or paid to persons insured, but without making any allowance or deduction for reinsurances, commissions, or other agency charges, or for reserves for unexpired risks at the beginning or end of the year.

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Deposits by Local Companies.

4. Every local company which after the commencement of this Act proposes to commence in New Zealand any class of insurance business specified in the Schedule to this Act shall, before commencing that class of business, deposit with the Public Trustee in money the sum specified in that Schedule in respect of that class of business.
5. (1) Subject to the provisions of this section and of section eleven of this Act, every local company which at the commencement of this Act is carrying on in New Zealand any class of insurance business specified in the Schedule to this Act shall, not later than the *thirty-first* day of *March*, nineteen hundred and *forty-one*, in respect of that class of business, deposit with the Public Trustee in money the sum of *one thousand* pounds, together with a further sum of *one thousand* pounds for each complete *two thousand five hundred* pounds of premium income earned by the company in respect of that class of business in its last financial year ending ended before the *first* day of *October*, nineteen hundred and *forty*.
- (2) If the premium income earned by any local company in respect of any class of insurance business in any financial year after the year referred to in the *last preceding* subsection is such that if the deposit under that subsection had been fixed by reference thereto it would have exceeded the deposits already made by the company under this section in respect of that class of business, then in every such case the company shall, within *six* months after the end of that financial year, deposit with the Public Trustee in money the amount by which the deposits already made would have been so exceeded.
- (3) No company shall be required under this section to deposit in respect of any class of insurance business a greater sum than the sum specified in the Schedule to this Act in respect of that class of business.
- (4) Every local company to which this section applies shall lodge with the Public Trustee, not later than the *thirty-first* day of *March*, nineteen hundred and *forty-one*, a statement setting forth in respect of

Deposits to be made by new local insurance companies.

Deposits to be made by existing local insurance companies.

each class of insurance business carried on by the company the premium income earned by the company in its last financial year ending ended before the first day of *October*, nineteen hundred and forty. Every such statement shall be verified by a statutory declaration made by a director or by the secretary of the company. 5

Deposits in connection with Motor-vehicles (Third-party Risks) Business.

Interpretation.

6. (1) For the purposes of this section and the next three succeeding sections the term "company" means a company as defined in the principal Act, and also includes every agent of a British underwriter or of a foreign underwriter, and every person who in New Zealand acts as an underwriter. 10 15

(2) In this section the terms "agent", "British underwriter", "foreign underwriter", and "underwriter" have the meanings respectively assigned thereto by section two of the Insurance Companies' Deposits Amendment Act, 1927. 20

See Reprint of Statutes, Vol. IV, p. 171

Deposits by companies undertaking motor-vehicles (third-party risks) business for first time. Ibid., Vol. VIII, p. 322

7. (1) Every company which after the commencement of this Act proposes to commence to undertake insurance business in terms of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, shall, before commencing that business, deposit with the Public Trustee in money the sum of *ten thousand* pounds in respect of that class of business. 25 30

(2) No notice under subsection one of section four of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, shall be given by any company liable to make a deposit under this section unless that company has made the deposit. 30

Deposits by companies at present undertaking motor-vehicles (third-party risks) business. 1933, No. 41

8. (1) *Subject to the provisions of this section and of section eleven of this Act*, every company which at the commencement of this Act is undertaking insurance business in terms of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, unless it has made a deposit which is then subsisting under section fifty-three of the Finance Act, 1933 (No. 2), shall not later than the *thirty-first* day of *March*, nineteen hundred and *forty-one*, in respect of that class of business, deposit with the Public Trustee in 35 40

money the sum of *one thousand* pounds, together with a further sum of *one thousand* pounds for each complete *two thousand five hundred* pounds of premium income earned by the company in respect of that class of
5 business in the year ended on the *thirty-first* day of *May*, nineteen hundred and *forty*.

(2) If, in the case of any company to which the *last preceding* subsection applies, the premium income earned in any annual licensing period in respect of
10 insurance business under the Motor-vehicles Insurance (Third-party Risks) Act, 1928, is such that if the deposit under the *last preceding* subsection had been fixed by reference thereto it would have exceeded the deposits already made by the company under this
15 section, the company shall, before the thirty-first day of March next following the end of that period, deposit with the Public Trustee in money the amount by which the deposits already made would have been so exceeded. For the purposes of this section the term "annual
20 licensing period" means the annual licensing period for motor-vehicles under the Motor-vehicles Act, 1924. Whenever any such period is greater or less than twelve months, the premium income earned by any company in that period shall for the purposes of this
25 subsection be deemed to be reduced or increased proportionately so as to equal the premium income for twelve months as if the income had been earned at a uniform rate throughout the licensing period.

See Reprint
of Statutes,
Vol. VIII,
p. 800

(3) No company shall be required under this
30 section to deposit a greater sum than *ten thousand* pounds, and any deposit made by a company under the provisions of section fifty-three of the Finance Act, 1933 (No. 2), and subsisting at the commencement of this Act shall be deemed to have been made under
35 this section.

1933, No. 41

(4) If any company to which this section relates fails to make the deposit required by subsection *one* hereof within the time limited in that behalf by that subsection, that company shall be deemed to have given
40 a notice of revocation under section four of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, notifying the revocation as from the *thirty-first* day of *May*, nineteen hundred and *forty-one*, of the existing notice of its willingness to undertake insurance business
45 in terms of that Act.

See Reprint
of Statutes,
Vol. VIII,
p. 823

(5) The Registrar of Motor-vehicles appointed under the Motor-vehicles Act, 1924, shall, not later than the thirty-first day of December in every year, deliver to the Public Trustee a statement showing in respect of each company to which this section relates the amount of the premium income earned by the company in respect of insurance business under the Motor-vehicles Insurance (Third-party Risks) Act, 1928, in the annual licensing period ending in that year. The first statement under this subsection shall be delivered not later than the thirty-first day of December, nineteen hundred and forty.

Deposits to be security for certain liabilities.

9. The Public Trustee shall, as to every deposit made or deemed to have been made by any company under either of the *last two preceding* sections, hold the same as security to meet the liabilities of that company under the Motor-vehicles Insurance (Third-party Risks) Act, 1928.

Repeal.

10. The last *four preceding* sections are in substitution for section fifty-three of the Finance Act, 1933 (No. 2), and that section is accordingly hereby repealed.

General.

Struck out.

Deposits by companies at present in business may be of securities.

11. (1) Subject to the provisions of this section, any company or person required under section *five* or under section *eight* of this Act to make a deposit not later than the *thirty-first* day of *March*, nineteen hundred and *forty-one*, may, instead of depositing the whole of the required amount with the Public Trustee in money, deposit a proportion thereof (being not less than one-fifth) in money, together with approved securities, as hereinafter defined, valued at not less than the amount of the balance of the deposit required.

(2) If any company or person in exercise of the powers contained in the *last preceding* subsection deposits approved securities, that company or person shall, not later than the thirty-first day of March in each of the years nineteen hundred and forty-two to nineteen hundred and forty-five, deposit with the Public Trustee in money a sum equal to one-fourth of the amount in respect of which the securities were deposited. Upon the deposit of any sum under this

Struck out.

subsection the Public Trustee shall return to the company a proportionate part of the securities, but so that the value at that time of the securities retained
5 by him is not less than the balance of the amount in respect of which the securities were deposited.

(3) For the purposes of this section the term "approved securities" means bonds, debentures, or
10 other securities issued by the Government of New Zealand or by the State Advances Corporation of New Zealand or by any Borough Council, County Council, Electric-power Board, or Harbour Board.

(4) The Public Trustee shall be the sole judge of the value of the approved securities for the purposes of this
15 section, and his decision shall be final and binding.

New.

11A. (1) Subject to the provisions of this section, any company or person required under section *five* or section
20 *eight* of this Act to make a deposit may, instead of depositing the whole of the required amount with the Public Trustee in money, deposit approved securities, as hereinafter defined, valued at not less than that amount or, if a proportion of the required amount is
25 deposited in money, valued at not less than the amount of the balance of the deposit required.

(2) Any company or person who has deposited approved securities under the provisions of this Part of this Act may withdraw any securities so deposited
30 on depositing with the Public Trustee approved securities or money, or both approved securities and money, of a value equal to the value at the time when they were deposited, of the securities so withdrawn:

Provided that the total value of the securities and money remaining deposited with the Public Trustee on
35 behalf of that company or person shall not be less than the amount required by this Part of this Act to be so deposited.

(3) Any securities or money deposited under the
40 *last preceding* subsection on the withdrawal of other securities shall be subject to the same charge or liability as the securities withdrawn.

New.

(4) For the purposes of this section and of the *next succeeding* section the term "approved securities" means bonds, debentures, or other securities issued by the Government of New Zealand or by the State Advances Corporation of New Zealand or by any Borough Council, County Council, Electric-power Board, or Harbour Board and, during the period referred to in the *next succeeding* subsection, such other securities as may in any particular case be approved by the Minister of Finance under the provisions of that subsection. 5 10

(5) The Minister of Finance may in the case of any company or person approve of first mortgages of freehold lands, or any other securities specified by him, being deposited with the Public Trustee under the provisions of this section as approved securities for such period, expiring not later than two years after the termination of the present war with Germany, as the Minister shall determine, and at the end of that period the company or person shall deposit with the Public Trustee approved securities or money, or both approved securities and money, of a value equal to the value, at the time of their deposit, of the securities previously deposited under this subsection. As soon as approved securities are so deposited the securities previously deposited under this subsection may be withdrawn. 15 20 25

(6) The Public Trustee shall be the sole judge of the value of approved securities for the purposes of this section and of the *next succeeding* section, and his decision shall be final and binding. 30

Increase of deposits where securities have depreciated.

11B. (1) If the Public Trustee is satisfied that by reason of depreciation in the value of securities or other cause the value of the approved securities, together with the money, deposited by any company or person under this Part of this Act falls short of the amount required by this Part of this Act, he may by notice in writing require the company or person to deposit with the Public Trustee money or approved securities or both to a value deemed by the Public Trustee to be sufficient to bring the amount of the deposit to the value required by this Part of this Act. 35 40

New.

(2) A notice under this section shall not be issued until after the Public Trustee has given an opportunity to the company or person to be heard in connection with the matter.

(3) If any company or person fails to deposit with the Public Trustee money or approved securities, or both, as required by the Public Trustee under this section such failure shall, for the purposes of sections nine, ten, and eleven of the principal Act, be deemed to be a default in complying with a requirement of the principal Act.

12. (1) Every company or person who deposits approved securities under ~~the last preceding section~~ *section eleven of this Act* shall be entitled to receive from time to time the income therefrom.

Income from securities.

(2) It is hereby declared that the provisions of section two of the Insurance Companies' Deposits Amendment Act, 1923, shall not apply with respect to the income derived by any company from approved securities deposited under ~~the last preceding section~~ *section eleven of this Act*.

See Reprint of Statutes, Vol. IV, p. 170

13. Except as otherwise provided in this Part of this Act, the provisions of the principal Act shall, with the necessary modifications, apply with respect to deposits made under this Part of this Act.

Provisions of principal Act to apply to deposits.

14. (1) Every company or person required by this Part of this Act or by the principal Act to make a deposit with the Public Trustee shall, at the expiration of each financial year, prepare ~~a statement of its or his revenue account for that year, and of its or his balance sheet at the close of that year, such statement in relation to that year~~ in such form, and containing such particulars as the Governor-General may from time to time by Order in Council prescribe.

Statements to be supplied annually.

New.

Any such Order in Council may prescribe different statements, forms, or particulars for different companies or persons or classes of companies or persons.

(2) Every such statement shall be audited, and shall be printed, and, together with three printed copies thereof, shall be deposited with the Public Trustee within *four* months after the close of the financial year to which it relates.

(3) The original of each statement shall be signed by the auditor, and shall also be signed in the case of a company by the principal officer of the company managing its business in New Zealand, or in the case of a person not being a company by that person. 5

(4) The Public Trustee shall forward one copy of each statement received under this section to the Minister of Finance, and shall forward another copy of each statement so received to the Minister of Justice. 10

Penalty for
false statement.

15. Every person who signs or deposits any statement required by this Part of this Act, knowing the same to be false in any particular, is liable to a fine of *fifty* pounds. 10

PART II.

WINDING-UP OF INSURANCE COMPANIES. 15

Interpretation.
Cf. 23 Geo. V,
c. 9, s. 4 (Imp.)

16. In this Part of this Act, unless the context otherwise requires,—

“ Court ” means the Supreme Court:

“ Deposited statement ”, in relation to any insurance company, means the statement ~~of its revenue account and balance sheet~~ deposited by the company with the Public Trustee under section *fourteen* of this Act: 20

“ Insolvent ” means, in relation to an insurance company at any relevant date, that if proceedings had been taken for the winding-up of the company the Court could, in accordance with the provisions of sections one hundred and sixty-nine and one hundred and seventy of the Companies Act, 1933, hold or have held that the company was at that date unable to pay its debts: 25

“ Insurance company ” means a company which is or has been carrying on in New Zealand any class of insurance business, being a company which may be wound up by the Court under the provisions of the Companies Act, 1933; and the terms “ company ” and “ insurance business ” have the meanings respectively assigned to them by section two of the Insurance Companies’ Deposits Act, 1921–22: 30 35 40

1933, No. 29

See Reprint
of Statutes,
Vol. IV, p. 165

“ Minister ” means the Minister of Justice.

17. A petition for the winding-up of an insurance company on the ground that it is unable to pay its debts within the meaning of sections one hundred and sixty-nine and one hundred and seventy of the Companies Act, 1933, may, with the leave of the Court, be presented by the Minister.

Power of Minister of Justice to petition on ground of insolvency. Cf. 23 Geo. V, c. 9, s. 1 (Imp.)

18. (1) The Minister may, by notice in writing served upon an insurance company, require it to furnish to him within such time as may be specified in the notice such explanations, information, accounts, balance-sheets, abstracts, and statements as he considers to be necessary for the purpose of determining whether the company is insolvent, or was insolvent at any date (not earlier than the close of the financial year to which the last deposited statement of the company relates) specified in the notice, and may, by the notice, require any such explanations, information, accounts, balance-sheets, abstracts, or statements to be signed by such number of the directors and by such officers of the company, and to be accompanied by such copies of documents, as may be specified in the notice, and to be certified as correct by an auditor approved by the Minister, or by an actuary so approved, or by both such an auditor and such an actuary.

Provisions as to insurance companies of doubtful solvency. Cf. 25 & 26 Geo. V, c. 45, s. 1 (Imp.)

(2) If after a notice under the *last preceding* subsection has been served upon an insurance company, either—

(a) The company does not, before the expiration of the time limited by the notice, comply with all the requirements of the notice, other than such requirements, if any, as may have been withdrawn by the Minister; or

(b) The Minister, after considering the material furnished pursuant to the said requirements, considers it to be expedient for the purpose aforesaid so to do,—

the Minister may serve upon the company a notice in writing stating that he proposes to appoint one or more inspectors to investigate the affairs of the company and to report thereon in such manner as the Minister may require, and unless the company within a period of *seven* days from the date of the service

of the notice upon it gives notice in writing to the Minister that it objects to such an appointment being made, the Minister may after the expiration of that period make such an appointment.

(3) If the company within the said period gives notice in writing to the Minister that it objects to such an appointment being made, the Minister may apply to the Court for leave to make such an appointment, and the Court shall grant leave unless it is satisfied by the company that such an appointment cannot reasonably be required for the purpose aforesaid, and on leave being granted the Minister may make such an appointment.

1933, No. 29 (4) Where an appointment is made under this section, the provisions of subsections three, four, and five of section one hundred and forty-two of the Companies Act, 1933, shall apply with respect to an inspector appointed under this section in like manner as they apply to an inspector appointed under that section, and any such refusal as is, or might be, made the ground of the punishment of an officer or agent of the company under the said subsection five shall also be a ground upon which the company may, on the petition of the Minister presented by leave of the Court, be wound up by the Court in accordance with the provisions of the Companies Act, 1933.

(5) The costs and expenses of and incidental to an investigation carried out by an inspector appointed under this section (in this subsection referred to as "the expenses") shall be defrayed out of the Consolidated Fund:

Provided that—

(a) Where the Court grants leave to make an appointment, the Court may, if it thinks fit, direct the company to repay to the Consolidated Fund the whole or any part of the expenses; and

(b) If an order for the winding-up of the company by the Court is made at any time within *twelve* months from the date on which the report of the inspector is made to the Minister, or, if more than one report is so made, from the date when the first report is

so made, the expenses shall be deemed, for the purposes of the Companies Act, 1933, to be expenses properly incurred in the winding-up and the amount thereof, after deducting any sum repaid to the Consolidated Fund pursuant to a direction given by the Court under the *last preceding* paragraph, shall be paid out of the assets of the company *pari passu* with the taxed costs of the petition.

19. (1) Rules made under section two hundred and eighty-five of the Companies Act, 1933, may regulate the procedure and the practice to be followed in the case of proceedings under this Part of this Act.

(2) In any proceedings upon a petition to wind up an insurance company presented under this Part of this Act evidence that the company was insolvent at the close of the financial year to which the last deposited statement of the company relates, or at any date specified in a notice served under subsection *one* of the *last preceding* section, shall be evidence that the company continues to be unable to pay its debts, unless the contrary is proved.

Supplemental provisions.

Cf. 23 Geo. V, c. 9, s. 3 (1), (3); 25 & 26 Geo. V, c. 45, s. 2 (Imp.)

SCHEDULE.

Schedule.

Sections 4, 5.

DEPOSITS TO BE MADE BY LOCAL COMPANIES HEREAFTER COMMENCING TO CARRY ON INSURANCE BUSINESS IN NEW ZEALAND.

	£
IN respect of fire-insurance business	22,500
IN respect of employers' liability insurance business ..	22,500
IN respect of all other classes of insurance business except business under the Motor-vehicles Insurance (Third-party Risks) Act, 1928	5,000