

# INSURANCE COMPANIES LAW REFORM BILL

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## EXPLANATORY NOTE

THIS Bill amends a number of enactments relating to the carrying on of insurance business.

*Part I* of the Bill amends the Life Insurance Act 1908.

*Part II* of the Bill amends the Insurance Companies Deposits Act 1953.

*Part III* of the Bill amends the Companies Act 1955.

*Part IV* repeals the Accident Insurance Companies Act 1908.

*Clause 1* of the Bill relates to the Short Title.

## PART I

### AMENDMENTS TO LIFE INSURANCE ACT 1908

*Part I* of the Bill amends the Life Insurance Act 1908.

*Clause 2* provides that Part I is to be read together with and deemed part of the Life Insurance Act 1908.

*Clause 3* amends section 2 of the principal Act (which relates to the definition of certain terms in Part I) and extends the definition of those terms to apply in respect of the new Part 1A of the Act.

*Clause 4* inserts a new *section 5A* in the principal Act. The effect of this section is to permit a company which has made a deposit of securities as required under the principal Act to show the value of such securities as an asset in the balance sheet of the company.

*Clause 5* inserts a new *section 8A* in the principal Act. The new section provides that in the case of the liquidation of a company which has deposited securities under the Act, the Public Trustee shall either convert the securities into cash and pay the proceeds of conversion to the liquidator, or transfer the securities to the liquidator or his nominee. The proceeds of conversion, or the securities transferred, or the proceeds arising from any transfer to the liquidator's nominee (as the case may be) are subject, in the hands of the liquidator to the same trusts as existed in respect of the Public Trustee. It is also provided that the payment or transfer to the liquidator or his nominee shall operate to discharge the Public Trustee from the trusts previously existing in respect of the securities.

*Clause 6* inserts a new *section 17A* in the principal Act. The effect of the new section is to require the statements of a company's revenue account and balance sheet prepared under sections 16 and 17 to be audited.

*Clause 7* substitutes a new *section 20* in the principal Act. The existing section is re-enacted as subsection (1) of the new section without amendment. Subsection (2) authorises the Governor-General by Order in Council to alter, add to, or substitute new forms for the forms contained in the Second to Fifth Schedules to the Act. Subsection (3) provides, in effect, that a company need not adopt the altered, or substituted form in respect of any financial year commencing before the commencement of the Order in Council.

*Clause 8* re-enacts *section 21* of the principal Act with minor amendments.

*Clause 9* substitutes a new *section 22* in the principal Act. The effects of this amendment are, first, to require a copy of every statement, abstract, or report of an auditor to be sent to the Government Actuary (and not an actuary appointed by the Minister of Finance as is presently the case) who is required to make a report thereon to the Minister of Justice, and, second, to enable information supplied to the Secretary under *section 21 (2)* of the principal Act also to be sent to the Government Actuary and to be reported on.

*Clause 10* re-enacts *section 23* of the principal Act with minor amendments.

*Clause 11* re-enacts *section 26* of the principal Act with minor amendment.

*Clause 12* makes a minor amendment to *section 27* of the principal Act.

*Clause 13* repeals subsection (2) of *section 28* of the principal Act which relates to the winding up of a company which is in default in complying with the requirements of Part I of the Act.

*Clause 14* substitutes a new *section 30* in the principal Act. Subsection (1) of the new *section 30* provides that a company may be wound up by the Court in accordance with the Companies Act 1955. This means that a company whether registered under that Act, or an unregistered company, may be wound up by the Court on any of the grounds provided in that Act and on the petition of any person authorised under that Act to petition for winding up.

Subsection (2) provides that a company which is liable under policies of insurance shall not be wound up voluntarily.

*Clause 15* inserts new *sections 30A and 30B* in the principal Act. The new *section 30A* requires the liquidator in the winding up of a company to determine the amount of the liability of the company under each contract of insurance and to notify the policyholders of his determination. The amount of the liability as so determined is binding upon each policyholder unless the policyholder appeals to the High Court. The Court is empowered to confirm, reverse, or modify the determination.

The new *section 30B* provides that the liquidator shall distribute the cash proceeds of deposited securities to policyholders in an amount equal to the value of the policy or the proportion that the value of each policy (i.e., the amount of the company's liability as determined under the new *section 30A*) bears to the total value of all policies, whichever is the lesser. It is provided that a distribution is not to prejudice the right of a policyholder to recover in the liquidation as respects any amount owing by the company which remains following the distribution.

*Clause 16*, which amends section 36 of the principal Act, provides that no person shall commence to act as an agent of a foreign company unless the company (and not the agent as is presently the case) has complied with the requirements of the Act.

*Clause 17* makes minor amendments to section 38 of the principal Act which relates to the prohibition of companies from transacting business.

*Clause 18* makes a minor amendment to section 79 of the principal Act which relates to the filing of statements by a company.

*Clause 19* inserts a new Part 1A in the principal Act relating to judicial management.

The new *section 40A* provides that the Court may on application by the Minister appoint a judicial manager if it appears that there is a likelihood that the company is, or will be unable to meet any liability under any policy of insurance.

The new *section 40B* provides (subject to certain exceptions) that after an application to the Court for the appointment of a judicial manager and until the application is dismissed, or if a judicial manager is appointed, until the appointment terminates, except with the leave of the Court, no person shall—

- (a) Commence or continue any proceedings against the company:
- (b) Obtain execution or enforce a judgment against the company:
- (c) Petition to wind up the company:
- (d) Exercise powers under any mortgage or charge over the property of the company:
- (e) Exercise certain powers under leases or tenancies.

The new *section 40C* makes it an offence for any person, after an application has been made to appoint a judicial manager, to transfer or remove property or assets outside the jurisdiction.

The new *section 40D* provides that from the date specified in the order appointing a judicial manager, the management of the company shall vest in that judicial manager and no director, manager, or other person, shall, except with his consent, act as an officer, servant, or agent of the company.

The new *section 40E* empowers the Court to revoke an order appointing a judicial manager and appoint a new judicial manager.

The new *section 40F* relates to the functions of a judicial manager. These are to carry on the business of the company, so far as is practicable, with a view to preserving its property and assets, and to make a report to the Court as to the state of the business of the company and recommending whether the business should be continued by the company or transferred, or whether the company should be wound up, or as to any other appropriate course of action.

The new *section 40G* relates to the powers of a judicial manager.

The new *section 40H* requires the judicial manager to file his report with the Court, and send copies to the Minister, Secretary for Justice, Government Actuary, policyholders and shareholders, directors of the company and creditors and any other persons he considers it desirable should receive the report. Such persons shall be entitled to make submissions to the judicial manager on the report.

The new *section 40I* relates to the transfer of the business of a company pursuant to a scheme of transfer.

Subsection (1) provides that where the report of the judicial manager contains a recommendation that the business of the company be transferred, the report shall be accompanied by a scheme of transfer setting out the terms of the scheme. Subsection (2) provides that the scheme is to be accompanied by a report of an independent actuary. Subsection (3) provides that the Government Actuary may report to the Court on the scheme and shall do so if the Court so requires. Subsection (4) provides that the judicial manager may apply to the Court for approval of the scheme of transfer.

Subsection (5) relates to the service of notice of the application, and subsection (6) to the persons entitled to appear. Subsection (7) authorises the Court to approve the scheme or any variation of the scheme.

Subsection (8) provides that the scheme as approved shall be binding on all persons.

The new *section 40J* provides that a scheme of transfer may provide for the reduction of contracts of insurance.

The new *section 40K* provides that a scheme of transfer may require the Public Trustee to transfer deposited securities to a transferee company where the value of the Life Fund of the company whose business is transferred is less than the aggregate amount of liabilities under policies of insurance transferred under the scheme.

The new *section 40L* provides that where the report by the judicial manager of a company (under the new *section 40F*) contains a recommendation that the company be wound up, or approval of a scheme of transfer or a recommendation to which *section 40M* applies is not granted (as the case may be) the judicial manager may, with the leave of the Court, petition to wind up the company under the Companies Act 1955.

The new *section 40M* provides for the judicial manager to apply to the Court for approval of a recommendation made in a report that the business of the company be continued in a different form to the form in which it was carried on before the appointment of the manager, or to such other course of action (except winding up or transfer under a scheme of transfer) as may be recommended. The section makes provision regarding the giving of notice of the application and the entitlement of persons to be heard in terms similar to those applying in the case of an application for approval of a scheme of transfer. The recommendation of the judicial manager, once approved, shall be binding on all persons. The new *section 40N* authorises the judicial manager to apply to the Court for directions.

The new *section 40O* relates to the protection of a judicial manager from civil and criminal liability.

The new *section 40P* relates to payment of costs, charges, and expenses incurred in connection with judicial management and remuneration of the judicial manager.

The new *section 40Q* relates to the termination of judicial management. It provides that the Court may, on the application of the Minister, any creditor, shareholder, director, or the judicial manager of the company, revoke the appointment of the judicial manager.

*Clause 20* substitutes a new Twentieth Schedule in the principal Act.

## PART II

## AMENDMENTS TO INSURANCE COMPANIES DEPOSITS ACT 1953

*Part II* of the Bill amends the Insurance Companies Deposits Act 1953.

*Clause 21* provides that Part II is to be read together with and deemed part of the Insurance Companies Deposits Act 1953.

*Clause 22* inserts new *sections 12A to 12C* into the principal Act. These new sections are substantially similar to the new *sections 8A, 30A, and 30B* of the Life Insurance Act 1908. The new *section 12A* requires the Public Trustee, in the case of a company which is being wound up, to realise securities deposited under the Act and either pay the proceeds to the liquidator, or transfer the securities to the liquidator or his nominee. The proceeds of conversion, or the securities or the proceeds arising from any transfer to the liquidator's nominee (as the case may be), are to be subject to the same trusts in the hands of the liquidator or his nominee as existed in the case of the Public Trustee. The payment or transfer shall discharge the Public Trustee from the trusts previously existing.

The new *section 12B* requires the liquidator to determine the amount of the liability of the company under each contract of insurance and to notify the policyholders of that determination. The amount so determined is binding upon each policyholder unless the policyholder appeals to the High Court. The Court may confirm, reverse, or modify the liquidator's determination.

The new *section 12C* requires the liquidator to make a distribution to each policyholder in an amount equal to the value of the policy or in the proportion (in the case of a deposit in respect of a class of insurance business), that the value of that policyholder's policy bears to the aggregate value of all policies of the same class of insurance, or (where the deposit is in respect of policyholders generally) that the value of the policy bears to the aggregate value of all policyholders of the company, (whichever is the lesser). A distribution is not to prejudice the right of a policyholder to recover in the liquidation as respects any amount owing by the company after a distribution.

The new *section 12D* provides that where a company is being wound up, no applications or orders may be made under section 12 (4) of the principal Act. Section 12 (4) provides for the making of an application to the Court for orders providing for the realisation of securities and distribution of the proceeds thereof.

*Clause 23* substitutes a new *section 16* in the principal Act relating to the making of statements and the contents thereof by persons required to make deposits under the Act. The main changes are to require the statement to be in the form set out in the Second Schedule to the Act which is inserted by *clause 30* of the Bill and to be filed with the Secretary for Justice instead of the Public Trustee.

*Clause 24* inserts new *subsections (1C) and (1D)* in section 19 of the principal Act. The new *subsection (1C)* authorises the agent of a Commonwealth or foreign underwriter in respect of marine insurance business who has made a deposit under section 3 (1) (e) of the principal Act, to withdraw that deposit if the deposit is made by the underwriter (Cf. section 3 (5)). The new *subsection (1D)* authorises the agent of a Commonwealth company or a foreign company which has made a deposit under section 3 (1) (f) of the principal Act, to withdraw that deposit if the deposit is made by the Commonwealth company or foreign company.

*Clause 25* substitutes a new *section 20* in the principal Act. The new section provides that every person, (and in the case of a company or mutual insurance association, every officer thereof) who makes default in complying with the Act, commits an offence and is liable on summary conviction to a fine of \$100. The new section defines the expression "officer in default" in the same terms as section 463 (2) of the Companies Act 1955.

*Clause 26* inserts a new *section 20A* in the principal Act. The new section prohibits an agent from negotiating, or attempting to negotiate, or holding himself out as having authority to negotiate a contract of insurance on behalf of a company or underwriter which has not made the required deposit under the Act, unless the agent has made the deposit, and makes it an offence for an agent to so act.

*Clause 27* substitutes a new *section 21* in the principal Act. The new section authorises the Minister, by notice in the *Gazette*, to prohibit a person who is in default in complying with any of the provisions of the Act from carrying on business. Publication may be dispensed with if the period is less than 3 months and the Minister considers publication to be unwarranted.

*Clause 28* substitutes a new *section 22* in the principal Act. The new section differs in minor respects from the existing section.

*Clause 29* makes a minor amendment to section 25 of the principal Act.

*Clause 30* inserts a new Second Schedule in the principal Act.

*Clause 31* renumbers the existing Second Schedule as the Third Schedule.

### PART III

#### AMENDMENTS TO COMPANIES ACT 1955

*Part III* of the Bill amends the Companies Act 1955.

*Clause 32* provides that Part III is to be read together with and deemed part of the Companies Act 1955.

*Clause 33* substitutes a new *paragraph (d)* in section 388 (5) of the principal Act (which relates to the winding up of unregistered companies). One of the grounds on which an unregistered company may be wound up is that it is unable to pay its debts, see section 388 (4). Section 388 (5) specifies the circumstances in which such a company is deemed to be unable to pay its debts. The effect of this amendment is to require account to be taken of contingent and prospective liabilities in determining whether the company is unable to pay its debts. Cf. section 218 (c) of the principal Act.

*Clause 34* substitutes a new *section 418* in the principal Act. The existing section requires insurance companies to publish at the registered office and branch offices of the company a brief statement (in the form prescribed in the Twelfth Schedule) of its share capital, assets and liabilities. Henceforth, this statement (the form and contents of which are prescribed in a new Twelfth Schedule) is to be filed with the Registrar of Companies.

*Clause 35* inserts a new *subsection (2A)* in section 419 of the principal Act. The new subsection provides that nothing in subsection (2) shall prejudice the right to enforce a contract of insurance against a company which has ceased to carry on insurance business under that subsection, or prevent an insurance company from doing any act, matter, or thing as respects a contract of insurance made before the company ceased under subsection (2) to carry on insurance business.

*Clause 36* relates to the definition of certain terms used for the purposes of provisions dealing with winding up of insurance companies. The definition of "deposited statement" is repealed (this is consequential upon minor amendments made to sections 422 (1) and 423 (2) of the principal Act), and a new definition of "insurance business" is substituted which extends to every class of insurance business except earthquake insurance (i.e., it now includes life and marine insurance).

*Clause 37* makes a minor amendment to section 421 of the principal Act.

*Clause 38* makes minor amendments to section 422 of the principal Act.

*Clause 39* substitutes a new *section 423* in the principal Act. The principal amendment is to provide that the report of an inspector appointed to investigate the affairs of an insurance company under section 422 of the principal Act shall be admissible in proceedings to wind up an insurance company under sections 421 or 422 of the principal Act.

#### PART IV

##### REPEAL OF ACCIDENT INSURANCE COMPANIES ACT 1908

*Part IV* of the Bill relates to the repeal of the Accident Insurance Companies Act 1908.

*Clause 40* repeals the Accident Insurance Companies Act 1908, the Accident Insurance Companies Amendment Act 1972, and the Accident Insurance Companies Amendment Act 1977.

*Clause 41* relates to transitional provisions.

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*Hon. Mr McLay*

## INSURANCE COMPANIES LAW REFORM

### ANALYSIS

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| <p>Title</p> <p>1. Short Title and commencement</p> <p style="text-align: center;"><b>PART I</b></p> <p>AMENDMENTS TO LIFE INSURANCE ACT 1908</p> <p>2. This Part to be read with Life Insurance Act 1908</p> <p>3. Interpretation</p> <p>4. Securities may be disclosed in balance sheet of company making deposit</p> <p>5. Application of securities by Public Trustee</p> <p>6. Statements to be audited</p> <p>7. Forms may be altered</p> <p>8. Requirements as to statements and abstracts</p> <p>9. Statements and abstracts to be examined by Government Actuary</p> <p>10. Copy of statement to be given to shareholders, etc.</p> <p>11. Documents may be inspected</p> <p>12. Documents to be received in evidence</p> <p>13. Non-compliance with this Part of this Act</p> <p>14. Winding up of companies under Companies Act 1955</p> <p>15. New sections inserted</p> <p style="padding-left: 2em;">30A. Liquidator to value policies in winding up</p> <p style="padding-left: 2em;">30B. Liquidator to distribute securities</p> <p>16. Penalty for non-compliance</p> <p>17. Companies may be prohibited from transacting business in certain cases</p> <p>18. Separate statements of New Zealand business</p> <p>19. New Part inserted</p> <p style="text-align: center;"><b>PART IA</b></p> <p style="text-align: center;"><b>JUDICIAL MANAGEMENT OF COMPANIES</b></p> <p>40A. Court may appoint judicial manager</p> <p>40B. Moratorium</p> <p>40C. Prohibition against removal of assets</p> | <p>40D. Management of company to vest in judicial manager</p> <p>40E. Revocation of order appointing judicial manager</p> <p>40F. Functions of judicial manager</p> <p>40G. Powers of judicial manager</p> <p>40H. Report of judicial manager to be filed</p> <p>40I. Transfer of business pursuant to scheme of transfer</p> <p>40J. Scheme of transfer may provide for reduction of policies</p> <p>40K. Public Trustee to transfer securities on approval of scheme</p> <p>40L. Judicial manager may petition to wind up company</p> <p>40M. Provisions applying to recommendation by judicial manager that business of company be continued</p> <p>40N. Judicial manager may apply to Court for directions</p> <p>40O. Indemnity</p> <p>40P. Expenses of judicial management</p> <p>40Q. Termination of judicial management</p> <p>20. New Schedule substituted</p> <p style="text-align: center;"><b>PART II</b></p> <p style="text-align: center;"><b>AMENDMENTS TO INSURANCE COMPANIES DEPOSITS ACT 1953</b></p> <p>21. This Part to be read with Insurance Companies Deposits Act 1953</p> <p>22. New sections inserted</p> <p style="padding-left: 2em;">12A. Application of securities by Public Trustee</p> <p style="padding-left: 2em;">12B. Liquidator to value policies in winding up</p> <p style="padding-left: 2em;">12C. Liquidator to distribute securities</p> <p style="padding-left: 2em;">12D. Section 12 (4) not to apply where company being wound up</p> <p>23. Statements to be supplied annually</p> <p>24. Withdrawal of deposits</p> |
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<p>25. Penalty for non-compliance</p> <p>26. Prohibition against agent negotiating contracts of insurance</p> <p>27. Prohibition against carrying on business</p> <p>28. Further penalty for carrying on business after notice prohibiting</p> <p>29. Repeals and savings</p> <p>30. New Schedule inserted</p> <p>31. Amendment to Second Schedule</p>	<p>35. Capital required by overseas limited insurance companies</p> <p>36. Interpretation</p> <p>37. Minister of Justice may petition on ground of insolvency</p> <p>38. Investigation of insurance companies of doubtful solvency</p> <p>39. Supplemental provisions</p>
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## PART III

## AMENDMENTS TO COMPANIES ACT 1955

32. This Part to be read with Companies Act 1955
33. Winding up of unregistered companies
34. Insurance companies to register periodical statement

## PART IV

- ACCIDENT INSURANCE COMPANIES ACT 1908  
REPEALED
40. Accident Insurance Companies Act 1908 repealed
41. Transitional provisions

## A BILL INTITULED

**An Act to amend certain enactments relating to the carrying on of the business of insurance**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: 5

**1. Short Title**—This Act may be cited as the Insurance Companies Law Reform Act 1982.

## PART I

## AMENDMENTS TO LIFE INSURANCE ACT 1908

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**2. This Part to be read with Life Insurance Act 1908**—This Part of this Act shall be read together with and deemed part of the Life Insurance Act 1908\* (in this Part of this Act referred to as the principal Act).

**3. Interpretation**—Section 2 of the principal Act is hereby amended by omitting the words “In this Part of this Act,” and substituting the words “In Parts I and IA of this Act”. 15

**4. Securities may be disclosed in balance sheet of company making deposit**—The principal Act is hereby amended by inserting, after section 5, the following section: 20

“5A. (1) The value of securities deposited under this Act may be shown in the balance sheet of the company by which the deposit of such securities was made as an asset of the company.

5 “(2) Nothing in subsection (1) of this section limits or affects section 8 of this Act.”

**5. Application of securities by Public Trustee**—The principal Act is hereby amended by inserting, after section 8, the following section:

10 “8A. (1) Where a company is being wound up, the Public Trustee shall either—

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

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

20 “(2) Any money paid to the liquidator under subsection (1) (a) of this section, or any securities (including the proceeds of conversion) and any money transferred to the liquidator under subsection (1) (b) of this section, or the proceeds arising from any transfer of the securities to a nominee of the liquidator (as the case may be), shall, in the hands of the liquidator, be subject to the same trusts as the securities held by the Public Trustee were subject to under

30 this Act.  
“(3) The payment of any money to the liquidator of the company under subsection (1) (a) of this section, or the transfer of any securities and any money to the liquidator of the company or any nominee of the liquidator under subsection (1) (b) of this section (as the case may be), shall discharge the Public Trustee from the trusts respecting the securities and any money deposited by the company.”

**6. Statements to be audited**—The principal Act is hereby amended by inserting, after section 17, the following section.

40 “17A. (1) Every statement prepared pursuant to sections 16 and 17 of this Act shall be accompanied by a written report prepared by an auditor (being a qualified person within the meaning of section 402 (5) of the Companies Act 1955) appointed for the purpose by the company preparing the

45 statement.

“(2) For the purposes of this section,—

“(a) Sections 163 and 164 and subsections (4) to (6) of section 165 of the Companies Act 1955 shall apply, with any necessary modifications, to the appointment, remuneration, removal, and disqualification of an auditor: 5

“(b) Section 166 of that Act shall apply, with any necessary modifications, to the content of the auditor’s report, to his right of access to the company’s books, and to his right to attend and be heard at the company’s meetings.” 10

**7. Forms may be altered**—The principal Act is hereby amended by repealing section 20, and substituting the following section:

“20. (1) The Minister, on the application of or with the consent of a company, may alter the forms in the Second to Seventh Schedules to this Act, for the purpose of adapting them to the circumstances of such company, or of better carrying into effect the object of this Part of this Act. 15

“(2) Notwithstanding subsection (1) of this section, the Governor-General may from time to time, by Order in Council, alter, add to, or substitute a new form for all or any of the forms in the Second to Fifth Schedules to this Act. 20

“(3) Notwithstanding subsection (2) of this section, a company may in respect of any financial year commencing before the commencement of an Order in Council made under that subsection, deposit any statement required to be deposited under this Act in the form contained in any of the Second, Third, Fourth, or Fifth Schedules to this Act (as the case may be) immediately before the commencement of that Order.” 25 30

**8. Requirements as to statements and abstracts**—

(1) The principal Act is hereby amended by repealing section 21 (as substituted by section 9 (1) of the Life Insurance Amendment Act 1974), and substituting the following section: 35

“21. (1) Each statement or abstract required under any of the foregoing provisions of this Act shall be made in writing and signed by the principal officer of the company managing the life insurance business in New Zealand. Such statement or abstract and the report of an auditor accompanying such 40

statement shall be deposited, together with 2 copies thereof, with the Secretary for Justice within 9 months after the date prescribed by this Act as the date at which it is to be prepared.

5 “(2) On receiving any such statement, or abstract, or report, the Secretary for Justice may, by notice in writing served on the company depositing the statement, or abstract, or report, require that company, within such period (being  
10 not less than 14 days after the date of service) or extended period as he may allow, to supply him with such explanation of, or such further information relating to, the subject-matter of the statement or abstract or report as he may consider necessary for the purposes of this Act.”

15 (2) Section 9 (1) of the Life Insurance Amendment Act 1974 is hereby consequentially repealed.

**9. Statements and abstracts to be examined by Government Actuary**—(1) The principal Act is hereby amended by repealing section 22 (as substituted by section 3 of the Life Insurance Amendment Act 1972), and substituting  
20 the following section:

“22. (1) One of each of the printed copies of every statement or abstract or report so deposited shall be sent by the Secretary for Justice to the Government Actuary who shall make such report to the Minister on such statement or  
25 abstract or report as he thinks fit, and the Minister may publish every such report in the *Gazette*.

“ (2) The Secretary for Justice may, if he thinks fit, send to the Government Actuary details of any explanation or information supplied under section 21 (2) of this Act and the  
30 Government Actuary may report thereon to the Minister either in a report made under subsection (1) of this section or in a separate report.”

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

35 **10. Copy of statement to be given to shareholders, etc.**—The principal Act is hereby amended by repealing section 23, and substituting the following section:

“23. A printed copy of the last-deposited statement, abstract, or report of an auditor accompanying such  
40 statement or other document required by this Part of this Act to be printed shall be forwarded by the company, by post or otherwise, on application, to every shareholder and policyholder of the company.”

**11. Documents may be inspected**—The principal Act is hereby amended by repealing section 26, and substituting the following section:

“26. Any printed or other documents required by this Part of this Act to be deposited with the Secretary for Justice, and any statements deposited with the Secretary for Justice under section 79 of this Act, may, on payment of such fees as the Minister directs, be inspected by any person, who may also on payment of such fees as are directed, obtain copies thereof.”

**12. Documents to be received in evidence**—Section 27 of the principal Act is hereby amended by inserting, after the word “statement,”, the words “and any report of an auditor accompanying such statement and every”.

**13. Non-compliance with this Part of this Act**—Section 28 of the principal Act is hereby amended by repealing subsection (2).

**14. Winding up of companies under Companies Act 1955**—The principal Act is hereby amended by repealing section 30, and substituting the following section:

“30. (1) A company may be wound up by the Court in accordance with the Companies Act 1955.

“(2) No company which is liable under any policy shall be wound up voluntarily.”

**15. New sections inserted**—The principal Act is hereby amended by inserting, after section 30 (as substituted by section 14 of this Act), the following sections:

“30A. **Liquidator to value policies in winding up**—

(1) In the winding up of a company the liquidator shall determine the amount of the liability of the company to each policyholder under each policy of insurance issued or granted by the company in such manner and upon such basis as the liquidator decides.

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

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

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

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

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

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

20 “**30B. Liquidator to make distribution to policyholders**—(1) The liquidator shall, in accordance with this section, distribute to each policyholder entitled thereto—

“(a) The sum paid to the liquidator by the Public Trustee under section 8A (1) (a) of this Act; or

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

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

35 “(a) An amount equal to the proportion that the liability of the company in respect of that policyholder determined under section 30A of this Act bears to the liability of the company to all policyholders so determined; or

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

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

“(a) Payment to the liquidator by the Public Trustee under section 8A (1) (a) of this Act; or

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

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

“(d) The determination of any appeal under section 30A of this Act, or if there is more than one such appeal, the determination of all such appeals,—

whichever is later in time.

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

**16. Penalty for non-compliance**—Section 36 of the principal Act is hereby amended by omitting the word “he”, and substituting the words “that company”.

**17. Companies may be prohibited from transacting business in certain cases**—(1) Section 38 (2) of the principal Act is hereby amended by inserting, after the words “such temporary prohibition”, the words “and where there has been no publication of such temporary prohibition, with knowledge of the prohibition (as the case may be)”.

(2) Section 38 of the principal Act is hereby amended by adding the following subsections:

“(3) Notwithstanding subsection (2) of this section, notice of a temporary prohibition under this section shall not be published if the period during which the company is prohibited from transacting business does not exceed 3 months and the Minister considers publication to be unwarranted.

“(4) For the purposes of this section, a company shall not be regarded as transacting business in New Zealand by reason only that it receives premiums or other money or does any other acts in respect of policies that have already been issued.”

**18. Separate statements of New Zealand business**—Section 79 (1) of the principal Act is hereby amended by omitting the figure “5”, and substituting the figure “9”.

**19. New Part inserted**—The principal Act is hereby amended by inserting after Part I, the following Part:

“PART IA

“JUDICIAL MANAGEMENT OF COMPANIES

“40A. **Court may appoint judicial manager**—(1) The Court may on an application made under this section make  
5 an order appointing a judicial manager of a company.

“(2) An order under subsection (1) of this section may be made where it appears that there is a likelihood that the company is, or will be unable to meet any of its liabilities to policyholders.

10 “(3) In determining whether there is a likelihood that the company is, or will be unable to meet any such liability, the Court may have regard to—

“(a) Any statement, or the report of any auditor accompanying such statement or abstract deposited with the Secretary for Justice under section 21  
15 of this Act:

“(b) Any report made by the Government Actuary under section 22 of this Act:

20 “(c) Any report made by an inspector appointed under section 422 of the Companies Act 1955:

“(d) Any other evidence.

“(4) An application under this section may be made by the Minister.

“40B. **Moratorium**—(1) This section applies to—

25 “(a) A company in respect of which an application has been made to the Court under section 40A of this Act for the appointment of a judicial manager:

“(b) A company in respect of which a judicial manager has been appointed under section 40A of this Act.

30 “(2) After an application has been made to the Court under section 40A of this Act for the appointment of a judicial manager and until that application has been dismissed, or, in the case of a company in respect of which a judicial manager has been appointed under section 40A of this Act, until the  
35 appointment of the judicial manager terminates (as the case may be) no person shall, without the leave of the Court,—

“(a) Commence or continue any action or other proceedings against any company to which this section applies:

40 “(b) Issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of any company to which this section applies:



“(c) Petition for the winding up of any company to which this section applies:

“(d) Foreclose, enter into possession, sell, appoint a receiver, or take or continue any power or rights whatsoever under or in pursuance of any mortgage, charge, debenture, instrument, or other security over the property of any company to which this section applies: 5

“(e) Determine or forfeit any tenancy, distrain for rent, re-take, or re-enter any premises or take or continue any power or rights whatsoever under or in pursuance of any lease, tenancy, or agreement to let or lease, against any company to which this section applies. 10

“(3) Notwithstanding the provisions of subsection (2) of this section, an action or any proceedings may be brought against any company to which this section applies for the purpose of determining whether any right or liability exists if the leave of the judicial manager of that company or of the Court has first been obtained. 15 20

“(4) Notwithstanding the provisions of subsection (2) of this section, the judicial manager of any company to which this Act applies may waive the application of subsection (2) of this section (except paragraph (c) of that subsection) to both any secured creditor of that company and his security. 25

“(5) Subject to the provisions of this Act, nothing in subsection (2) of this section shall affect the existence of any security over the property of any company to which this section applies or its priority in relation to other debts.

“40c. **Prohibition against removal of assets**—(1) After an application has been made to the Court for the appointment of a judicial manager under section 40A of this Act, no person shall transfer or remove from New Zealand any property or assets of the company in respect of which that application is made otherwise than in the ordinary course of carrying on the business of the company. 30 35

“(2) Any person who, after an application has been made to the Court for the appointment of a judicial manager under section 40A of this Act, transfers or removes from New Zealand any property or assets of the company in respect of which that application is made otherwise than in the ordinary course of carrying on the business of the company, commits an offence and is liable on conviction to a fine not exceeding \$10,000, 40

“(3) Nothing in subsection (2) of this section shall prevent the issue of an injunction or the making of any order to prevent such property or assets being removed from New Zealand.

5    “**40D. Management of company to vest in judicial manager**—(1) Subject to this Part of this Act, where an order has been made under section 40A of this Act appointing a judicial manager in respect of the company named in the order, the management of the company shall, on and after the  
10 date specified in the order, vest in the judicial manager.

“ (2) While any company to which this Part of this Act applies remains under the management of a judicial manager appointed under section 40A of this Act, it shall not be lawful or competent for any director, manager, or other person to be  
15 engaged in the management or conduct of the business of that company, or to act as an officer of or as the agent or servant of the company, except with the permission of the judicial manager and so far as that permission extends.

“**40E. Revocation of order appointing judicial manager**—(1) The Court may, on the application of the Minister, or the judicial manager or a director of the company in respect of which a judicial manager has been appointed, or any other person interested, revoke an order appointing a  
20 judicial manager and the appointment of the judicial manager shall thereupon terminate.

“ (2) Where the Court revokes an order appointing a judicial manager under subsection (1) of this section, the Court shall make an order appointing any other person as a judicial manager and all the provisions of this Part of this Act  
30 shall apply with all necessary modifications as if the judicial manager so appointed had been appointed under section 40A of this Act.

“**40F. Functions of judicial manager**—The functions of a judicial manager, which shall be exercised in relation to the  
35 company in respect of which that judicial manager has been appointed, shall be—

“ (a) To carry on the business of the company, in order to preserve and keep intact so far as practicable, the property and assets of the company:

40    “ (b) To make a report to the Court as to the state of the business and affairs of the company and to recommend therein as to—

“ (i) The carrying on by the company of the business of the company:

“(ii) The transfer of the business of the company, or any part thereof to any other company pursuant to a scheme of transfer accompanying the report:

“(c) The winding up of the company: 5

“(d) Any other course of action, matter or thing in respect of the business of the company.

“40G. **Powers of judicial manager**—(1) Subject to subsection (2) of this section a judicial manager shall have, and may exercise in relation to the company in respect of 10 which he is appointed, all such powers, rights and authorities as may be necessary to carry out his functions under this Act.

“(2) A judicial manager shall not, without the approval of the Court given in respect of any policy or class of policies, issue or grant policies of insurance. 15

“40H. **Report of judicial manager to be filed**—(1) The report of a judicial manager under section 40F of this Act shall be filed with the Court within 12 months after the appointment of the judicial manager, or within such longer period as the Court may allow, on application made to it by 20 the judicial manager.

“(2) A copy of the report or a summary of it shall be sent to the Minister, the Secretary for Justice, the Government Actuary, every policyholder of and shareholder in the company, and to every creditor and director of the company 25 and to such other persons as the judicial manager considers it appropriate or desirable should receive such copy or summary.

“(3) Every person to whom a copy of the report or a summary of it is sent shall be entitled to make submissions in 30 writing on the matters contained in the report to the judicial manager within such period not exceeding 3 months as may be specified.

“(4) The judicial manager shall forthwith make a supplementary report to the Court on any such submissions. 35

“40I. **Transfer of business pursuant to scheme of transfer**—(1) If the report of the judicial manager contains a recommendation that the business of the company, or any part thereof, be transferred, the report shall be accompanied by a scheme of transfer which shall set out the terms of the 40 scheme including:

- “(a) The policies in respect of which liability is to be assumed by the company to which it is proposed to transfer the business or any part thereof, and the amount of such liability in respect of each policy:
- 5 “(b) The assets and the net value thereof to be transferred in consideration for the assumption of such liability:
- “(c) The terms of any agreement under which it is proposed to transfer the business or any part thereof.
- 10 “(2) The scheme of transfer shall be accompanied by a report thereon by an independent actuary.
- “(3) The Government Actuary may report to the Court on any scheme of transfer, and shall do so if the Court directs.
- 15 “(4) The judicial manager may, at any time after the expiration of the time for the making of submissions under section 40H (3) of this Act, apply to the Court for an order approving the scheme of transfer.
- “(5) Notice of the application shall be given to the persons entitled to receive copies of the report of the judicial manager under section 40H of this Act and may be given to such other persons as the judicial manager considers it desirable should receive it.
- 20 “(6) The following persons shall be entitled to appear and be represented at the hearing of an application under this section:
- 25 “(a) Every person to whom notice of the application has been sent:
- “(b) A company to which it is proposed to transfer the business or any part thereof of any company pursuant to the scheme of transfer:
- 30 “(c) Any policyholder, shareholder, or creditor (as the case may be) appointed to represent the policyholders, shareholders, or creditors of the company (as the case may be) or any class thereof.
- 35 “(d) With the leave of the Court, any other person who appears to the Court to have a sufficient interest in the application:
- “(7) On an application under this section for approval of a scheme of transfer, the Court may by order approve the scheme of transfer and, subject to the agreement of the judicial manager and the company to which it is proposed to transfer the business or part thereof, may approve any modification to the scheme of transfer.
- 40

“(8) An order approving a scheme of transfer shall be binding upon all persons and for all purposes notwithstanding anything contained in the memorandum or articles of association of the company or in any other document constituting the company.

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“40J. **Scheme of transfer may provide for reduction of policies**—Subject to this Part of this Act, a scheme of transfer may make provision for the reduction of policies of insurance proposed to be transferred pursuant to the scheme.

“40K. **Public Trustee to transfer securities on approval of scheme**—(1) Where the value of the Life Insurance Fund of the company whose business, or part thereof, is to be transferred pursuant to a scheme of transfer, is less than the aggregate amount of the liabilities under policies of insurance to be transferred pursuant to the scheme, the scheme of transfer may provide that the Public Trustee shall transfer to the company to which the policies are to be transferred, securities deposited by the company with and held by the Public Trustee equal in value to the amount by which the aggregate amount of the liabilities under the policies to be transferred pursuant to the scheme exceeds the value of the Life Insurance Fund (excluding the value of securities deposited by the company under this Act).

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“(2) The transfer of securities by the Public Trustee under this section shall discharge the Public Trustee from the trusts respecting the securities transferred.

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“40L. **Judicial manager may petition to wind up company**—The judicial manager may, with the leave of the Court, petition under the Companies Act 1955 to wind up the company in respect of which the judicial manager has been appointed where—

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“(a) The report of the judicial manager under section 40F of this Act contains a recommendation that the company be wound up; or

“(b) A scheme of transfer is not approved by the Court under section 40I of this Act; or

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“(c) A recommendation made by the judicial manager is not approved by the Court under section 40M of this Act.

**“40M. Provisions applying to recommendation by judicial manager that business of company be continued—**(1) Where the report of a judicial manager under section 40F of this Act contains a recommendation:

5 “(a) That the business, or any part thereof, of the company in respect of which that judicial manager has been appointed continue to be carried on in a form different to the form in which that business, or part thereof, was being carried on when the judicial manager was appointed; or

10 “(b) As to any other course of action, matter, or thing in respect of the business or any part thereof of the company (not being a recommendation either that the business of the company be transferred pursuant to a scheme of transfer, or that the company be wound up),—

15 the judicial manager may, at any time after the expiration of the time for the making of submissions under section 40H (3) of this Act, apply to the Court for an order approving the recommendation.

20 “(2) On an application under this section for an order approving the recommendation the Court may by order approve the recommendation on such terms and conditions as it thinks fit.

25 “(3) An order approving a recommendation shall be binding on all persons and for all purposes notwithstanding anything contained in the memorandum or articles of the company or in any other document constituting the company.

30 “(4) Subsections (3), (5), and (6) (except paragraph (b) of subsection (6)) of section 40I of this Act shall apply to an application by a judicial manager under this section as if it were an application by a judicial manager for an order approving a scheme of transfer.

**“40N. Judicial manager may apply to Court for directions—**(1) A judicial manager may apply to the Court for directions concerning the business or property of any company, or the management or administration of any such business or property, or the exercise of any functions or powers under this Act.

40 “(2) Every such application shall be served upon, and the hearing may be attended by, all persons interested in the application or such of them as the Court thinks fit.

“40o. **Indemnity**—A judicial manager shall not be under any criminal or civil liability as a result of any act or omission in pursuance or intended pursuance of any of his functions or powers under this Act whether on the ground of mistake of law or fact, or any other ground, unless the act was done or omitted in bad faith. 5

“40p. **Expenses of judicial management**—All costs, charges, and expenses properly incurred by a judicial manager in the exercise of his functions and powers under this Act (including such remuneration as may be approved by the Court) shall be payable out of the property of the company in respect of which the judicial manager is appointed in priority to all other claims. 10

“40q. **Termination of judicial management**—(1) The Minister, or any creditor, shareholder, or director of a company in respect of which an order has been made appointing a judicial manager, or the judicial manager of the company, may apply to the Court for an order revoking the appointment of the judicial manager. 15

“(2) The Court may, on the application of any person specified in subsection (1) of this section, revoke the order appointing a judicial manager, where the Court is satisfied that for any reason the order should not continue in force. 20

“(3) Where the Court revokes an order appointing a judicial manager, the appointment of the judicial manager shall thereupon terminate and the company in respect of which the appointment was made shall cease to be subject to judicial management under this Act.” 25

**20. New Schedule substituted**—(1) The principal Act is hereby amended by repealing the Twentieth Schedule, and substituting the Twentieth Schedule set out in the First Schedule to this Act. 30

(2) Notwithstanding subsection (1) of this section, a company may in respect of any financial year commencing before the commencement of this Act, file the statement required to be filed under section 78 of the principal Act in the form of the Twentieth Schedule repealed by this section. 35

## PART II

## AMENDMENTS TO INSURANCE COMPANIES DEPOSITS ACT 1953

**21. This Part to be read with Insurance Companies Deposits Act 1953**—This Part of this Act shall be read  
5 together with and deemed part of the Insurance Companies Deposits Act 1953\* (in this Part of this Act referred to as the principal Act).

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

- 10 “12A. **Application of securities by Public Trustee**—  
(1) This section and sections 12B to 12D of this Act shall apply to the securities and any money deposited under this Act by a company in respect of the carrying on by it of insurance business otherwise than as an agent
- 15 (2) Where a company which has deposited securities or any money, or on behalf of which any such deposit has been made, is being wound up, the Public Trustee shall either—  
“**(a)** Convert all the securities to which this section applies and held by the Public Trustee into money, and  
20 pay the aggregate amount of such money, together with any money previously deposited by the company to which this section applies and held by the Public Trustee, to the liquidator of the company; or
- 25 “**(b)** Transfer to the liquidator of the company or any nominee of the liquidator all such securities and any money deposited by the company and held by the Public Trustee.
- “**(3)** Any money paid to the liquidator under subsection  
30 (1) (a) of this section, or any securities (including the proceeds of conversion by the liquidator) and money transferred to the liquidator under subsection (2) (b) of this section or the proceeds arising from any transfer to a nominee of the liquidator under subsection (2) (b) of this section (as  
35 the case may be), shall in the hands of the liquidator be subject to the same trusts as the securities held by the Public Trustee were subject to under this Act.

\*R.S. Vol. 7, p. 475  
Amendment 1982, No. 117



“(4) The payment of any money to the liquidator of the company under subsection (2) (a) of this section, or the transfer of any securities and money to the liquidator of the company or any nominee of the liquidator under subsection (2) (b) of this section, (as the case may be), shall discharge the Public Trustee from the trusts respecting the securities and any money deposited by the company to which this section applies. 5

“12B. **Liquidator to value policies in winding up—**

(1) In the winding up of a company the liquidator shall determine the amount of the liability of the company to each policyholder under each policy of insurance issued or granted by the company in such manner and upon such basis as the liquidator decides. 10

“(2) Notice in writing of the amount of such liability under each policy of insurance determined under subsection (1) of this section shall be given by the liquidator to each policyholder by: 15

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

“(b) Sending it to that person by post addressed to that person either by name or office at that person’s last known place of abode or business, or at any address given by that person. 20

“(3) Notice given under subsection (2) of this section if by post, shall be deemed, in the absence of proof to the contrary, to be effected at the time when the notice would have been delivered in the ordinary course of post. 25

“(4) The amount of the liability of the company as determined by the liquidator under subsection (1) of this section, shall be binding upon each policyholder to whom notice is given under subsection (2) of this section, unless, within 2 months after the date such notice was given, that person appeals to the High Court against the liquidator’s determination. 30

“(5) On an appeal to the High Court against the liquidator’s determination, the High Court may confirm, reverse, or modify the determination appealed against and may make such other order as it thinks just. 35

“12C. **Liquidator to distribute securities—**(1) The liquidator shall, in accordance with this section, distribute to each policyholder entitled thereto— 40

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

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

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

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

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

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

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

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

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

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

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

whichever is later in time.

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

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

**23. Statements to be supplied annually**—(1) The principal Act is hereby amended by repealing section 16 (as amended by section 3 of the Insurance Companies Deposits Amendment Act 1972), and substituting the following section: 5

“16. (1) Every person required by this Act to make a deposit with the Public Trustee shall, at the expiration of each financial year, prepare a statement or statements in relation to that year in the form prescribed in respect of that person contained in the Second Schedule to this Act. 10

“(2) The Governor-General may from time to time, by Order in Council add to, alter, or substitute a new form for all or any of the forms contained in the Second Schedule to this Act. 15

“(3) Notwithstanding subsection (2) of this section, a company may in respect of any financial year commencing before the commencement of an Order in Council made under that subsection, deposit any statement required to be deposited under this section in the form contained in the Second Schedule to this Act immediately before the commencement of that Order. 20

“(4) Every such statement shall be audited by a person qualified to be the auditor of a company under section 402 (5) of the Companies Act 1955, and shall be printed or typewritten, and, together with 2 printed or typewritten copies thereof, shall be deposited with the Secretary for Justice within 9 months after the close of the financial year to which it relates. 25

“(5) The original of each statement shall be signed by the auditor, and shall also be signed in the case of a company by the principal officer of the company managing its business in New Zealand, or in the case of a mutual insurance association by the secretary or manager of the association, or in the case of a person not being a company or a mutual insurance association, by that person.” 30 35

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

**24. Withdrawal of deposits**—Section 19 of the principal Act is hereby amended by inserting, after subsection (1B) (as inserted by section 2 of the Insurance Companies Deposits Amendment Act 1977), the following subsections: 40

“(1c) Any person who has made a deposit with the Public Trustee under section 3 (1) (e) of this Act as an agent of a Commonwealth underwriter or of a foreign underwriter in

respect of marine insurance business, may withdraw that deposit to the extent that he is relieved from making such a deposit by virtue of section 3 (5) of this Act.

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

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

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

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

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

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

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

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

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

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

- “(a) An agent of a company or an underwriter if that agent has made the deposit required to be made by him under this Act as the agent of that company or underwriter:
- “(b) An agent of a Commonwealth underwriter or a foreign underwriter, or a Commonwealth company or a foreign company if that agent has made a deposit under section 4B of this Act.
- “(4) It shall be a defence to a charge under this section if the agent proves that he had reasonable grounds for believing and did believe that the deposit had been made by the company or underwriter.”

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

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

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

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

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

“22. (1) If any such person as aforesaid, or any person as attorney, general agent, or other agent for him or otherwise for or on his behalf, after publication of any notice under section 21 of this Act, or with knowledge of a prohibition under that section, receives any application for insurance, or accepts any premium for insurance, or otherwise carries on the business of that person or agent in New Zealand in

contravention of the notice, then, in addition to any penalty for which they may be liable under section 20 or section 20A of this Act, all such persons are severally liable on summary conviction to a fine not exceeding \$200 for each and every act  
5 so done in breach of the notice.

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

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

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

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

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

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### PART III

#### AMENDMENTS TO COMPANIES ACT 1955

**32. This Part to be read with Companies Act 1955**—  
This Part of this Act shall be read together with and deemed  
30 part of the Companies Act 1955\* (in this Part of this Act referred to as the principal Act.)

**33. Winding up of unregistered companies**—Section 388 (5) of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) If it is proved to the satisfaction of the Court that the

\*Reprinted 1977, Vol. 4, p. 2933.

Amendments: 1978, No. 45; 1980, No. 43; 1981, No. 61

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.”

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**34. Insurance companies to register periodical statement**—(1) The principal Act is hereby amended by repealing section 418, and substituting the following section:

“418. (1) Every company shall, before it commences to carry on in New Zealand any class of insurance business to which this section applies and once in every year during which it carries on any such business file with the Registrar a statement in the form set out in the Twelfth Schedule to this Act, or as near thereto as circumstances admit. 10

“(2) Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding 20 cents. 15

“(3) If default is made in complying with this section, the company and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding \$10 for every day during which the default continues.” 20

(2) The principal Act is hereby amended by repealing the Twelfth Schedule, and substituting the Twelfth Schedule set out in the Third Schedule to this Act. 25

**35. Capital required by overseas limited insurance companies**—Section 419 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) Nothing in subsection (2) of this section shall— 30

“(a) Limit or affect the enforcement by any person of a contract of insurance against a company which has ceased to carry on business under that subsection:

“(b) Prevent a company from doing any act, matter, or thing in relation to a contract of insurance made at any time before the company ceased to carry on business under that subsection.” 35

**36. Interpretation**—(1) Section 420 of the principal Act is hereby amended by repealing the definition of the term “deposited statement”. 40

(2) Section 420 of the principal Act is hereby further amended by repealing the definition of the term “insurance business”, and substituting the following definition:

5           “ ‘Insurance business’ means every class of insurance business except insurance against earthquake:”.

**37. Minister of Justice may petition on ground of insolvency**—Section 421 of the principal Act is hereby amended by omitting the words “unable to pay its debts”, and substituting the word “insolvent”.

10   **38. Investigation of insurance companies of doubtful solvency**—Section 422 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

15           “(1) The Minister may, by notice in writing served on 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  
20 insolvent at any date specified in the notice, (not being a date earlier than 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), and may, by the notice,  
25 require any such explanations, information, accounts, balance sheets, abstracts, or statements to be signed by such number of the directors and by such other officers of the company, and to be accompanied by such copies of documents, as may be specified in the notice, and to be  
30 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.”

**39. Supplemental provisions**—The principal Act is hereby amended by repealing section 423, and substituting  
35 the following section:

          “423. (1) Rules made under section 341 of this Act may regulate the procedure and practice to be followed in the case of proceedings under sections 421 and 422 of this Act.

40           “(2) In any proceedings upon a petition to wind up an insurance company presented under section 421 or section 422 of this Act, evidence that the company was insolvent 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, or at any date specified in a notice served under subsection (1) of the said section 422, shall be evidence that the company continues to be insolvent unless the contrary is proved. 5

“(3) Notwithstanding any other enactment or rule of law, a report made by an inspector appointed to investigate the affairs of an insurance company under section 422 of this Act, shall be admissible in evidence in any proceedings to wind up an insurance company presented under section 421 or section 422 of this Act.” 10

#### PART IV

##### ACCIDENT INSURANCE COMPANIES ACT 1908 REPEALED 15

**40. Accident Insurance Companies Act 1908 repealed**—(1) The Accident Insurance Companies Act 1908 (as amended by the Accident Insurance Companies Amendment Act 1972 and the Accident Insurance Companies Amendment Act 1977) and the First Schedule thereto are hereby repealed. 20

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

**41. Transitional provisions**—(1) Notwithstanding section 40 of this Act, every company to which the Accident Insurance Companies Act 1908 applied immediately before the commencement of this Act, shall prepare and deposit a statement in accordance with that Act in respect of the financial year of that company commencing immediately before the commencement of this Act. 30

(2) Nothing in subsection (1) of this section shall apply to a company which has deposited a statement in accordance with section 16 of the Insurance Companies Deposits Act 1953 in respect of that financial year. 35



ANALYSIS OF NEW POLICIES

Type of Business	Regular Premium Contracts			Single Premium Contracts		
	Number of Contracts	Premiums	Sums Assured	Number of Contracts	Premiums	Sums Assured
Life Insurance						
Whole life						
Endowment						
Pure endowment						
Level term						
Decreasing term						
Personal Superannuation						
Lump sum						
Pension						
Employee Superannuation						
Lump sum						
Pension						
Annuities						
Other						

SECOND SCHEDULE

Clause 30

NEW SECOND SCHEDULE TO INSURANCE COMPANIES DEPOSITS ACT 1953

“SECOND SCHEDULE

Section 16

*Note:* The Revenue Account of the company shall be in the form set out below for each class of insurance business in respect of which premiums amounting to or exceeding 5 percent of the total premium income of the company are received.

Where the premiums in respect of a class of insurance business do not amount to 5 percent of the total premium income of the company, such amounts may be combined either under the heading “Various Risks” or with a revenue account in respect of similar risks.

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

[Specify class of insurance business, e.g., “Fire Insurance”.]

1. Premium Income

Add

Provision for unearned premium at beginning  
of financial year

Other premium provisions at beginning of  
financial year

Deduct

Provision for unearned premium at end of  
financial year

Other premium provisions at end of financial  
year

2. Premiums earned during the financial year

3. Claims paid during the financial year

Add

Outstanding claims provision at end of  
financial year

Deduct

Outstanding claims provision at beginning of  
financial year

4. Claims incurred during the financial year

5. Expenses incurred in respect of [Specify class of  
insurance] Insurance

Commission

Travelling Expenses

Salaries

Advertising

Management expenses (specify)

Other underwriting expenses (specify)

6. Total Claims and Expenses  
(item 4 plus item 5)

7. Underwriting revenue (or loss)  
(item 2 less item 6)

Add  
Reinsurance Recoveries  
Deduct  
Reinsurance premiums incurred

8. [*Specify class of insurance*] Insurance underwriting  
surplus (or deficit) (*Transferred to Profit and Loss  
Account*)

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

Surplus (Deficit) transferred from each Revenue  
Account

Investment Income from:

Government Stock  
Local Body Stock  
Mortgages  
Rent  
Shares in unrelated companies<sup>(1)</sup>  
Debentures in unrelated companies<sup>(1)</sup>  
Other investments (specify)

Inter-group income (subsidiaries and parent company)

Other income (specify)

Total income, all sources

Deduct expenses other than underwriting expenses  
Administration  
Other expenses (specify)

Net Profit (loss) before tax

Net profit (loss) transferred to Appropriation Account

Note 1:

Exclude shares or debentures in subsidiaries or parent company.

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

Undistributed Profit (or Loss) carried forward at  
beginning of financial year

Net Profit (Loss) for year transferred from Profit and  
Loss account

Add

Prior years adjustments (specify)

Extraordinary items (specify)

Transfers from reserves (specify)

Other items (specify)

Available for Appropriation (or Loss carried forward)

Deduct

Dividends to shareholders

Prior years adjustments (specify)

Extraordinary items (specify)

Transfer to reserves (specify)

Transfer to Insurance Funds (specify)

Other items (specify)

Undistributed Profit (or Loss) carried forward at the end  
of financial year and shown in Balance Sheet

BALANCE SHEET OF [NAME OF COMPANY] AS AT

19

*Funds and Liabilities*

Shareholders Funds

Authorised capital

Less authorised capital not issued

Less uncalled capital

Paid up capital

Reserves (specify)

Retained earnings (accumulated losses)

Insurance Funds

Provision for unearned premiums

Other premium provisions

Other underwriting provisions (specify)

Fire insurance provision

Marine insurance provision

Household insurance provision

Other

Long Term Liabilities

Debentures

Mortgages

Long term liabilities to subsidiaries and parent  
company

Other long term liabilities (specify)

Short term liabilities to policyholders and creditors  
 Claims provisions  
 Claims in course of adjustment (not included in claims provision)  
 Premiums owing to reinsurers  
 Other short term creditors (specify)  
 Bank overdrafts  
 Short term liabilities to subsidiaries and parent company

Total Funds and Liabilities

---

*Assets*

Fixed Assets (less depreciation)  
 Land and buildings  
 Motor vehicles  
 Other (specify)

---

Investments

Government stock  
 Local body stock  
 Mortgages  
 Real estate  
 Shares in unrelated companies<sup>(1)</sup>  
 Debentures in unrelated companies<sup>(1)</sup>  
 Other investments (specify)  
 Securities in subsidiaries and parent company  
 Unsecured long term loans to parent company and subsidiaries

---

Current Assets

Premiums outstanding:  
 More than 12 months  
 More than 6 but less than 12 months  
 Less than 6 months  
 Recoveries owing from reinsurers  
 Agents balances  
 Other current assets (specify)  
 Current accounts of parent company and subsidiaries

---

Liquid Assets

Deposits available on call  
 Cash  
 Other (specify)

Intangible Assets (specify)

---

Total Assets

Note 1: Not shares or debentures in subsidiaries or parent company.

THIRD SCHEDULE

Clause 34 (2)

NEW TWELFTH SCHEDULE TO COMPANIES ACT 1955

“TWELFTH SCHEDULE

Section 418

FORM OF STATEMENT TO BE PUBLISHED BY COMPANIES CARRYING ON INSURANCE BUSINESS (OTHER THAN LIFE INSURANCE)

Assets

Fixed Assets

Investments

Loans to directors, shareholders, officers of the company, staff, and relatives of the abovenamed persons

Amounts owing by holding and subsidiary companies distinguishing between secured and unsecured amounts

Current assets

Intangible assets

Total Assets:

\_\_\_\_\_

Liabilities

Liabilities secured

Liabilities unsecured

Total Liabilities

\_\_\_\_\_

Net Assets (Net Liabilities)

\_\_\_\_\_

Shareholders Funds

Share Capital

Reserves

Profit and Loss Appropriation Account

\_\_\_\_\_

Total Shareholders Funds (Deficiency of Capital)

\_\_\_\_\_

Certified as a correct summary of the Company's balance sheet.

..... Director.

..... Secretary.