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*Report 87*

# Life Insurance

*November 2004*  
Wellington, New Zealand

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# Recommendations

## Repeal of Life Insurance Act 1908

- R1 The Life Insurance Act 1908 should be repealed and not replaced (paragraph 3.8).

## Life insurers to incorporate as companies

- R2 All life insurers that offer life policies to the New Zealand public, or that remain liable under such policies, should be required by the Securities Act 1978 to incorporate as companies in New Zealand, unless exempted by the Securities Commission on certain criteria (paragraphs 3.9–3.16).

## Disclosure

- R3 The Securities Act 1978 regime should be extended to cover life insurance policies that do not have an investment element (risk only policies) (paragraphs 4.7–4.8).
- R4 The advertising provisions of the Securities Act 1978 and regulations 8 and 9 of the Securities Regulations 1983 should be extended to cover risk only policies. Other advertising provisions set out in the Securities Regulations 1983 should be reviewed to determine to what extent they are appropriate for risk only policies (paragraphs 4.9–4.13).
- R5 The “investment statement” required by the Securities Act 1978 should be renamed the “product disclosure statement” and should be required in respect of all life insurance policies (paragraphs 4.14–4.17).
- R6 An exemption regime should apply to renewals and variations of risk only policies, similar to that currently provided by the Securities Act (Renewals and Variations) Exemption Notice 2002 (paragraphs 4.18–4.20).
- R7 The prospectus regime under the Securities Act 1978 should be reviewed for the purpose of determining both the information that needs to be disclosed and the best way of disclosing it. Pending the completion of such a review, a prospectus should be required for risk only policies offered to the New Zealand public (paragraphs 4.21–4.27).
- R8 The request disclosure regime under the Securities Act 1978 should be extended to cover risk only policies (paragraphs 4.28–4.29).
- R9 The periodic disclosure regime under section 54A of the Securities Act 1978 should be implemented in relation to life insurance policies, subject to an appropriate exemption regime (paragraphs 4.30–4.36).
- R10 The prospectus requirements for new start-up life insurers should include forecast financial statements for the first year of operation, audited by an auditor and an audit actuary (paragraphs 4.37–4.38).

- R11 A life insurer should be required to notify the prudential supervisor of a material adverse change to the insurer's solvency position as soon as the insurer is aware, or should reasonably be aware, of the change; and the prudential supervisor should be empowered to require the life insurer to notify all policyholders of the change (paragraphs 4.39-4.42).
- R12 The requirements for investment statements should be amended to make it clear that, where there is an element of discretion in the returns achieved by a life insurance policyholder, the key factors affecting the exercise of that discretion must be disclosed (paragraph 4.50).
- R13 Life insurers should be required to disclose the current surrender basis and the assumptions underlying it to life insurance policyholders on request, together with any change in the current surrender basis, as compared with the surrender basis disclosed at the time of sale, or five years previously, whichever is the later. At the same time, where there are options other than surrender available to the policyholder that may be more advantageous to the policyholder, the insurer should be required to disclose that there are other options available, and should prominently display a recommendation that the policyholder seek advice in this regard (paragraphs 4.51-4.52).
- R14 The Securities Act 1978 and Securities Regulations 1983 should be amended to incorporate requirements for the use of prospective information similar to those set out in the Investment Savings and Insurance Association (ISI) Standard for Benefit Projections Involving Investment Performance, to apply if benefit projections are given (paragraphs 4.54-4.56).
- R15 The Securities Regulations 1983 should be amended to require life insurers to disclose on request the following sorts of information in relation to allocation of profits:
- information as to which bonuses are guaranteed once allocated (reversionary bonuses), and which are completely discretionary on termination;
  - the bonus rates for the last five years, separated for reversionary and terminal bonuses;
  - the actual investment returns on the assets backing the life policy for the same period;
  - the mix of the assets backing the life policy (paragraphs 4.57-4.65).

### **Financial reporting**

- R16 The Financial Reporting Act 1993 requirements to prepare, audit and register annual financial statements should be extended to cover all issuers (including non-company issuers) of risk only life insurance policies to the public (as well as issuers of savings policies) (paragraphs 5.9-5.10).
- R17 The financial standard applicable to life insurers that issue life policies to the New Zealand public should be reviewed for the purpose of including sufficient disclosure on solvency matters to enable "monitors" of a life insurer (including the audit actuary and prudential supervisor) to form an accurate view of the solvency position of the life insurer. In particular, the level of disclosure required relating to reinsurance arrangements should be increased (paragraphs 5.12-5.16).
- R18 The Financial Reporting Act 1993 should be amended to provide for the approval of actuarial standards in the same way as it currently provides for approval of financial

reporting standards. The Accounting Standards Review Board should be augmented by the inclusion of appropriate actuarial representation (paragraphs 5.17-5.23).

- R19 New Zealand Society of Actuaries Guidance Note 5 should be reviewed (or new actuarial standards introduced) to ensure that the prudential capital requirements for life insurers offering life policies in New Zealand are set at an appropriate level (paragraphs 5.24-5.26).
- R20 All life insurers that offer life policies to the New Zealand public should be required by the Financial Reporting Act 1978 to obtain an independent actuarial audit of the actuarial aspects of their financial statements, subject to an exemption regime for overseas life insurers (operated by the Securities Commission). The actuarial auditor should be appointed by the life insurer, and approved by the auditor. The audit actuary's report should be annexed to the auditor's report (paragraphs 5.27-5.30).
- R21 The Financial Reporting Act 1993 should be amended to give the Securities Commission a power to approve persons to act as audit actuaries, having regard to such criteria and on such terms and conditions as the Securities Commission thinks fit, and to revoke any such approval. The approvals and revocations of approval to be by notice in the *New Zealand Gazette* (paragraphs 5.31-5.34).
- R22 The financial reporting standards should require the financial statements of a life insurer to state the principles upon which the valuation and distribution of profits among policyholders are made, and as between shareholders and policyholders, and any classes of either group (paragraphs 5.37-5.38).
- R23 Life insurers should have ongoing reporting requirements to the prudential supervisor, in particular to provide copies of each prospectus and half yearly certificate, and give notification in the event of material adverse changes (paragraphs 5.39-5.40).
- R24 The audit actuary should have a "whistle-blowing" role in the event of becoming aware of any matter relevant to the exercise or performance of the powers or duties of the prudential supervisor (paragraph 5.41).
- R25 Section 50 of the Securities Act 1978 should be extended (or an equivalent section enacted) to the effect that auditors of life insurers have obligations to report to the prudential supervisor, by providing copies of reports and other information, and, in particular, to report to the life insurer and prudential supervisor on becoming aware of matters relevant to the exercise or performance of the powers or duties of the prudential supervisor (paragraph 5.41).
- R26 Persistent failure to comply with the Financial Reporting Act 1993 should be included as a ground on which a person can be disqualified from acting as a director, under the Companies Act 1993 (paragraph 5.43).

### **Prudential supervision**

- R27 There should be a "prudential supervisor" for every life insurer (but not a reinsurer), who has certain powers to monitor the financial condition of the life insurer and take enforcement action if necessary. The prudential supervisor could be either a private sector "policyholder agent" or a "government monitor". There should be an exemption regime operated by the Securities Commission (paragraphs 6.1-6.5).
- R28 If the prudential supervisor is to be a government entity (a government monitor), either the Securities Commission or the Reserve Bank of New Zealand should undertake this role. The costs of the government monitor should be met by industry levies (paragraphs 6.7-6.10).

- R29 If the prudential supervisor is to be a private sector entity (a policyholder agent), each life insurer should appoint its own policyholder agent by contract from a list of persons approved for this purpose by the Securities Commission, which would monitor the performance of all policyholder agents and revoke approval where appropriate (paragraph 6.11).
- R30 The prudential supervisor should have power to request further information, to conduct investigations, and to apply for voluntary administration or liquidation (paragraph 6.12).
- R31 The powers of the Registrar of Companies under Part 2 of the Insurance Companies (Ratings and Inspections) Act 1994 in relation to life insurers should be repealed (paragraphs 6.13-6.15).
- R32 If the voluntary administration regime contained in the Insolvency Law Reform Bill is enacted, then it should be amended to include the prudential supervisor as a person entitled to apply to the High Court for appointment of an administrator, and "creditors" should include prospective or contingent creditors, such as policyholders. If the voluntary administration regime is not enacted, then a regime similar to judicial management should be enacted that allows the prudential supervisor and any policyholder to apply to the High Court for appointment of an administrator of a financially troubled life insurer (paragraphs 6.16-6.18).
- R33 Sections 30, 30A and 31 of the Life Insurance Act 1908 should be moved to the Companies Act 1993 (paragraph 6.19).
- R34 In relation to amalgamations of life insurers, Part 13 of the Companies Act 1993 should be amended as suggested in paragraphs 6.26 and 6.27 (paragraphs 6.20-6.27).
- R35 The prudential supervision role for life insurers should be undertaken by private sector policyholder agents approved and monitored by the Securities Commission, rather than being undertaken by a government monitor (paragraphs 6.28-6.35).

### **Financial advisers, analysts and ratings**

- R36 The development of a new regulatory framework for financial advisers is a top priority, and any new framework should apply to all persons who offer financial advice (including advice on life insurance) to the New Zealand public (paragraphs 7.7-7.19).
- R37 The Government and the life insurance industry should promote and support the establishment and operation of a number of independent and competent life insurance analysts to provide public comparative information on the solvency, activities and life policies of life insurers operating in New Zealand (paragraphs 7.20-7.25).
- R38 Until independent and competent analysts of New Zealand life insurers and policies become well established, every life insurer offering life policies to the public in New Zealand (or that continues to be liable under life policies offered in New Zealand) should be required to have a financial strength rating given by an approved rating agency. The Government should publish a table on the internet (and provide hard copies to public libraries and Citizens' Advice Bureaux) stating the financial strength rating of every life insurer offering life policies to the New Zealand public, and any negative change in such a rating during the previous 12 months (paragraphs 7.26-7.35).

- R39 The Government should arrange for the Consumers' Institute of New Zealand Inc or another suitable body to have a substantial ongoing public educational role in relation to life insurance (paragraph 7.36).

### **Insurance Contracts Act**

- R40 A new Insurance Contracts Act based on the Bill provided in appendix C should be enacted (paragraphs 8.1-8.7).
- R41 In relation to transfers by life insurers of life policies held by members of the New Zealand public, provisions should be included in the Insurance Contracts Bill as suggested in paragraphs 8.82-8.86 (paragraphs 8.69-8.86).
- R42 The Insurance Contracts Bill should include a process for life insurers to have policy terms amended by the High Court for administrative reasons, so long as notice is given to policyholders and the prudential supervisor who may oppose such an amendment (paragraphs 8.87-8.91).

### **Reinsurance**

- R43 Overseas life reinsurers that are carrying on business in New Zealand, offering reinsurance in respect of the issue to the New Zealand public of life insurance, should continue to be subject to the requirements of the Companies Act 1993 that apply to overseas companies carrying on business in New Zealand (paragraphs 9.4-9.5).
- R44 Overseas reinsurers carrying on the business in New Zealand of reinsuring liabilities under life policies offered to the New Zealand public should be required by the Financial Reporting Act 1993 to register audited financial statements under that Act that comply with the relevant financial reporting standards, and the actuarial information in them should be required to be actuarially audited, unless an exemption has been granted by the Securities Commission (paragraphs 9.6-9.7).
- R45 New Zealand-established reinsurers that reinsure life policies offered to the New Zealand public should be required by the Financial Reporting Act 1993 to register audited financial statements under that Act that comply with the relevant financial reporting standard, and the actuarial information in those statements should be required to be actuarially audited (paragraph 9.10).
- R46 The actuarial solvency standard for life insurers should be reviewed to ascertain whether closer scrutiny of reinsurance arrangements and reinsurers is required (paragraph 9.13).
- R47 Life insurers should be required by the relevant reporting standard to disclose the name of the reinsurer and a brief description of any reinsurance arrangement that constitutes a material asset of the life insurer (paragraphs 9.14-9.15).

### **Cross border issues**

- R48 Overseas life insurers offering life policies to the public in New Zealand should be required to incorporate in New Zealand, subject to an exemption regime operated by the Securities Commission (paragraphs 10.6-10.7).
- R49 The power of the Registrar of Companies under section 11(3) of the Financial Reporting Act 1993 to exempt a reporting entity incorporated outside New Zealand

from the requirement to prepare financial statements that comply with New Zealand financial reporting standards (and to comply instead with the reporting standards of the entity's home country) should be transferred to the Securities Commission (paragraph 10.11).

- R50 Overseas life insurers offering life policies to the public in New Zealand should be required to comply with the Financial Reporting Act 1993 to prepare, audit and register financial statements, and to have those statements independently actuarially audited, subject to an exemption regime (in relation to the actuarial audit) to be operated by the Securities Commission (paragraph 10.12).
  - R51 Overseas life insurers offering life insurance to the public in New Zealand should be required to appoint a policyholder agent (if that is the method of prudential supervision chosen for life insurers). The Securities Commission should have the power to exempt overseas life insurers from the prudential supervision requirement on certain criteria (paragraph 10.13).
  - R52 The Corporations (Investigation and Management) Act 1989 should be amended to clarify that "creditors" in section 4 includes contingent and prospective creditors (paragraph 10.14).
  - R53 Overseas life insurers offering life policies to the public in New Zealand (or remaining liable under such policies) that are exempted by the Securities Commission from the requirement to incorporate as a company in New Zealand should be required to register as overseas companies under the Companies Act 1993 (paragraphs 10.17-10.19).
  - R54 The Securities Act 1978 should require all life policies issued by life insurers that offer to the public to provide that the insurer will abide by a decision of the High Court of New Zealand, and that the policy will be governed by New Zealand law (subject to an exemption regime to be operated by the Securities Commission in relation to the requirement for a policy to be governed by New Zealand law) (paragraph 10.20).
  - R55 The Securities Commission should provide information to the public on internet offers of life insurance from offshore entities in the course of performing its function under section 10(d) of the Securities Act 1978, including guidance on what laws are applicable, and issue warnings as appropriate. This information should also extend to guidance about solicitations from offshore financial intermediaries (paragraphs 10.34-10.35).
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