

A guide to the Insurance Companies (Ratings & Inspections) Act 1994

INTRODUCTION

The Insurance Companies (Ratings and Inspections) Act 1994 ("the Act") requires insurers (other than certain exempt insurers) to:

- Obtain a rating from an approved rating agency; and
- Register that rating with the Registrar of Companies; and
- Disclose the rating before entering into or renewing a contract of insurance.

This pamphlet is issued as a guide to obtaining, registering and disclosing a rating under the Act.

OBTAINING A RATING

WHAT IS A RATING?

A rating is an assessment of an insurer's ability to pay present and future claims. A rating is represented by a letter, number and/or symbol and forms a part of a rating scale (eg., AA, B or C-).

APPLICATION

In summary, the requirement to obtain a rating applies to every insurer that conducts insurance business in New Zealand, whether by way of a New Zealand incorporated company or as a branch operation. There are however, the following exceptions:

- The Act does not apply to:
 - Any business of life insurance carried on by an insurer;
 - Captive insurers;
 - Reinsurers.
- An insurer which is not party to any contract of disaster or general insurance may elect not to obtain a rating by registering a notice of election not to be rated. (A contract of disaster or general insurance means insurance against loss, destruction or damage to tangible property)

Insurers which were carrying on business on 25 November 1994 were required to:

- Obtain a rating by 25 November 1995, and to register that rating within 5 working days of receiving notice of the rating; or
- Register a notice of election not to be rated by 25 November 1995.

New entrants to the insurance market must obtain and register a rating, or register a notice of election not to be rated, before commencing business.

WHO IS RATED?

A rating must be obtained for the legal entity which enters into contracts of insurance in New Zealand. Thus, where the business is carried on by a New Zealand incorporated subsidiary, it is that subsidiary which must obtain a rating. Where business is carried on as a branch of an overseas company, the rating must be obtained in respect of that overseas company.

OBTAINING A RATING

Insurers must be rated by a rating agency which has been approved by the Registrar of Companies. The Registrar has approved the following rating agencies:

*A.M. Best Asia Pacific Limited
Unit 5707, Central Plaza
18 Harbour Road
Wanchai, Hong Kong
Phone: 852 2827 3400
Fax: 852 2824 1833
Contact Person:
Moungmo Lee*

*Fitch Ratings
Level 22, 300 Queen Street
Brisbane, Queensland 4000

Phone: (0061) 7 3222-8600
Fax: (0061) 7 3222-8622
Contact Persons:
John Miles; Andrew Smith*

*Standard & Poor's (Australia)
Level 37, 120 Collins Street
Melbourne 3000, Australia

Phone: (0061) 3 9650 9813
Fax: (0061) 3 9650 0305
Contact Persons:
Ian Thompson; Michael Vine*

In accordance with the Act, the Insurance Council has entered into agreements with these approved rating agencies as to the terms upon which ratings are to be provided to insurers. Copies of the agreements may be inspected free of charge at any Companies Office.

RATING REVIEW

Insurers who are required to obtain a rating must have a current rating, at all times. A current rating is a rating which is not more than 1 year old.

Insurers must therefore renew their ratings annually. New annual ratings must be registered.

CERTIFICATE OF RATING

Within 5 working days of receiving a rating, an insurer must register the rating by delivering a "Certificate of Rating", which has been prepared by its rating agency, to the Registrar of Companies:

*C/- Insurance and Superannuation Unit, Business Services Branch
Ministry of Economic Development, P O Box 10867, Wellington
Phone: +64 4 913 3651, Fax: +64 4 913 3652*

Upon registering its first rating, an insurer must also register the rating scale of which its rating forms part, together with an explanation of that rating scale. The rating scale and explanation will be provided to the insurer by its rating agency.

NOTICE OF ELECTION NOT TO BE RATED

If an insurer, which is not party to a contract of disaster or general insurance, does not wish to obtain and register a rating, it may register a notice of election not to be rated. The notice must be in the prescribed form. A copy of the prescribed form of election not to be rated is available at any Companies Office.

Notices of election not to be rated must be delivered for registration to the Insurance and Superannuation Unit at the above address.

CREDIT WATCH WARNING

A rating agency may, at any time, issue a certificate of credit watch warning in respect of an insurer's rating. A credit watch warning indicates that the agency is considering a possible downgrading in the insurer's rating.

Within 5 working days of receiving a credit watch warning, an insurer must register the warning by delivering the certificate of credit watch warning to the Insurance and Superannuation Unit.

PUBLICATION OF DOWN GRADED RATING

If an insurer receives a new rating which is lower in value than its previous rating, the insurer must:

- Within 5 working days of receiving a certificate of the downgraded rating, register the new rating; *and*
- Within 10 working days of receiving a certificate of the downgraded rating, give public notice that the rating has been downgraded.

"Public notice" means published in at least one issue of:

- The Gazette; *and*
- A newspaper usually published on every working day in the area of the insurer's place or principal place of business in New Zealand.

ADVERTISING A RATING

If an insurer distributes an advertisement that refers to its rating, or any part of its rating, then the advertisement must also state, **prominently**:

- The rating; *and*
- The name of the rating agency which gave the rating; *and*
- Whether the rating agency which gave the rating is an approved rating agency (rating agency approved by the Registrar of Companies); *and*
- Any credit watch warning relating to the rating; *and*
- That any rating scale of which the rating forms part, is available for inspection at any New Zealand office of the insurer, or, if the insurer does not carry on business in New Zealand, at any New Zealand office of an insurance intermediary named in the advertisement.

SUMMARY OF RATING DISCLOSURE REQUIREMENTS

WRITTEN DISCLOSURE BEFORE ENTERING OR RENEWING A CONTRACT OF INSURANCE

An insurer or an insurance intermediary must, before entering into or renewing a contract of insurance, disclose *in writing* to the insured:

- The insurer's current rating and the date on which the rating was given; *and*
- The rating scale of which the insurer's rating forms part; *and*
- Any credit watch warning relating to the insurer's rating, the date on which it was given and the reasons for it; **or**
- That the insurer has elected not to be rated and is not required to have a rating.

WRITTEN DISCLOSURE BY INTERMEDIARY EFFECTING INSURANCE OUTSIDE NEW ZEALAND

An insurance intermediary must, before arranging or renewing a contract of insurance or co-insurance with an insurer that does not carry on business in New Zealand, disclose *in writing* to the insured either:

- The most recent rating of the insurer given by an agency recognised by the insurance industry as a competent agency, and the date of the rating; *and*
- The relevant rating scale; *and*
- Any credit watch warning, the date on which it was given, and the reasons for it; **or**
- That no such rating is available and the reasons for this.

An intermediary, who arranges a contract of co-insurance with 2 or more overseas insurers, is not required to disclose the above matters if, before the contracts are entered into or renewed, the intermediary discloses *in writing* that:

- On account of the number of insurers the above matters are not being disclosed.

DISCLOSURE WHERE IMPRACTICABLE TO MAKE PRIOR WRITTEN DISCLOSURE

If it is not reasonably practicable for an insurer or an insurance intermediary to make disclosure *in writing* before a contract is entered into or renewed, the insurer or intermediary must:

- Make *oral* disclosure of all the above matters, except for the insurer's rating scale, before the contract is entered into or renewed; *and*
- Make *written* disclosure of all matter as soon as practicable.

FAILURE TO MAKE DISCLOSURE

Failure by an insurer or an intermediary to comply with the requirement to make any disclosure gives the insured the right to cancel the insurance contract in writing within 20 working days after the contract was entered into or renewed.

EXAMPLES OF WRITTEN DISCLOSURE

All written disclosures must be made clearly and prominently. A written disclosure may state, for example:

- XYZ Insurance Ltd has an AA Very Strong claims paying rating given by Standard & Poor's (Australia) Pty Ltd on 24 November 1995. The Rating scale is:

AAA	(Extremely Strong)	BBB+	(Good)	B	(Weak)
AA+	(Very Strong)	BBB	(Good)	B-	(Weak)
AA	(Very Strong)	BBB-	(Good)	CCC	(Very Weak)
AA-	(Very Strong)	BB+	(Marginal)	CC	(Extremely Weak)
A+	(Strong)	BB	(Marginal)	R	(Regulatory Action)
A	(Strong)	BB-	(Marginal)		
A-	(Strong)	B+	(Weak)		

- XYZ Insurance Ltd has an A+ Strong claims paying rating given by Fitch Australia Pty Ltd on 24 August 2004. The Rating scale is:

AAA	(Exceptionally Strong)	BBB+	(Good)	B	(Weak)
AA+	(Very Strong)	BBB	(Good)	B-	(Weak)
AA	(Very Strong)	BBB-	(Good)	CCC	(Very Weak)
AA-	(Very Strong)	BB+	(Moderately Weak)	CC	(Very Weak)
A+	(Strong)	BB	(Moderately Weak)	C	(Very Weak)
A	(Strong)	BB-	(Moderately Weak)	DDD	(Distressed)
A-	(Strong)	B+	(Weak)	DD	(Distressed)
				D	(Distressed)

- XYZ Insurance Ltd has a C Weak claims paying rating given by A.M. Best Company, Inc on 24 November 1995. The rating scale is:

A++	(Superior)	B+	(Very Good)	C	(Weak)
A+	(Superior)	B	(Fair)	C-	(Weak)
A	(Excellent)	B-	(Fair)	D	(Poor)
A-	(Excellent)	C++	(Marginal)	E	(Under Supervision)
B++	(Very Good)	C+	(Marginal)	F	(In Liquidation)

On 20 June 1996 a credit watch warning was issued in relation to the rating. The reasons for the credit watch warning are that

- XYZ Insurance Ltd has elected not to have a rating in accordance with the Insurance Companies (Ratings and Inspections) Act 1994, and is not required to have a rating.

RATING DISCLOSURE GUIDELINES

TELE-SELLING

Where an insurer concludes or renews a contract of insurance by means of a telephone communication with the insured, the insurer's employee or agent must make oral disclosure at the time of the communication. This requires a statement that, for example:

- "ABC Insurance Co [Insurer] has a XYZ rating [Rating and Description] which was given on Date/Month/Year" [Date]; *or*
- "ABC Insurance Co [Insurer] has elected not to have rating in accordance with the Insurance Companies (Ratings and Inspection) Act 1994, and is not required to have a rating".

This oral disclosure must then be followed up by written disclosure as soon as practicable. Written disclosure can be effected by:

- The delivery of a disclosure document to the insured, which sets out the following matters:
 - The insurer's current rating and the date on which the rating was given; and
 - The rating scale of which the insurer's rating forms part; and
 - Any credit watch warning relating to the insurer's rating, the date on which it was given and the reasons for it; *or*
 - That the insurer has elected not to be rated and is not required to have a rating.
- The incorporation of the above matters in writing in the invoice, insurance contract or confirmation of insurance delivered to the insured.

DIRECT SELLING

Where an insurer concludes or renews a contract of insurance other than by means of a telephone communication or an insurance intermediary, the insurer should make written disclosure before the contract is entered into or renewed. Written disclosure can be effected by:

- Presentation of a disclosure document to the insured;
- Incorporation of the disclosure information in the insurance proposal;
- In the case of the delivery of a renewal or expiry notice to the insured, incorporation of the disclosure information in the notice or attachment of a disclosure statement to the notice.

INSURANCE EFFECTED THROUGH INTERMEDIARIES

The Act provides that disclosure by an insurance intermediary who arranges or renews a contract of insurance is sufficient and that the insurer is not then required to make direct disclosure. However, the obligation to make disclosure remains with the insurer. If the intermediary fails to make disclosure, the insured is entitled to cancel the contract of insurance within 20 working days.

There are two steps an insurer may take to assist an intermediary to comply with the disclosure requirements of the Act.

1. Ensure that intermediaries who place business with the insurer are equipped with the information to make written disclosure. This may involve providing those intermediaries with a disclosure document which contains all the information required to be disclosed.
2. Include the disclosure document with the insurance contract or confirmation document, where this is delivered by the insurer to the insured.