

THE LEGAL ENVIROMENT

(i) Introduction

In the last chapter it was apparent that insurance involves a great deal of public interest. It has been shown how the 'mushroom' companies operated on unsound insurance principles. All these simply emphasize the importance of legislation in the insurance industry.

Prior to 1961 the only law governing insurance in Malaya was the Life and Fire Insurance Companies Ordinance 1948. This was a simple enactment and did not envisage extensive control. Life insurance was going out of control and the first major step towards its control was taken with the passing of the 1961 Life Assurance Act. The object of this enactment was to prevent life assurance policies being issued at premium rates which were not actuarially adequate, and was an interim measure to meet the situation created by the 'mushroom' life insurance companies. The Life Assurance Companies (compulsory liquidation) Act 1962 aimed at ending the ill-practices of the mushroom insurance companies.

These interim measures were followed by a comprehensive legislation enacted as the Insurance Act 1963 with the object of ensuring security to the policyholders. Similarly non-life insurance business came into focus too under this particular Act. The Act was intended to encourage formation of indigenous companies, though in the Act there was no discrimination against foreign insurers. Many of the clauses of this Act were modelled on similar clauses in the Life Insurance Act 1945-1959 of the Commonwealth of Australia (1), while recourse was also had to laws applying in Canada, India, New Zealand, South Africa and the United Kingdom, principally the Commonwealth countries. The extent and nature of control had naturally to be determined in the context of the needs of the country against its economic and political background.

(ii) Insurance Commissioner and His Powers

The Act creates a statutory position of an "Insurance Commissioner" subject to directions of the Finance Minister of Malaysia. He is required to make an annual report on the working of this Act and submit it to the Minister who will then present it before both Houses of Parliament in Malaysia.

The Insurance Commissioner is armed with wide powers to enforce compliance with the Act. He examines

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(1) Quoted from an interview with the Insurance Commissioner.

the various returns submitted to ensure that they comply with the Act and are not misleading and incorrect. He can require any explanation regarding the returns from the companies and can direct them to make any alteration if this is necessitated in the return so as to maintain conformity with the Act. In the case of winding up, the Insurance Commissioner is entitled to obtain information pertaining to the winding up so as to provide him with information on the progress being made and may make an application to the Court if for instance, he is not satisfied with the progress that is carried out. Life policy holders are assured of a fair share of any surplus fund at the liquidation of any Insurance Company. While the policy holders are required to be advised of the details of proposals for transfers of business, the Insurance Commissioner examines such proposals on behalf of the policy-holders.

The power to investigate into the affairs of any company (after giving the company an opportunity to show cause why he should not make the investigation) is also vested upon the Commissioner. Having completed any investigation that is found appropriate, the Insurance Commissioner has authority to issue directions to the company to cater for the situation disclosed. The Insurance Commissioner can order that new policies issued by any company in Malaya, is not permitted to be issued. The Insurance Commissioner also gives a helpful hand to the industry through the Insurance Association which is a voluntary body devoting efforts to develop the insurance business on sound and healthy lines.

(111) Registration

Insurance companies carrying out insurance business in Malaya are requested to be registered under the Act. New companies will only be registered under the Act if they possess a surplus of assets over liabilities of one million dollars or one and a half million dollars if the company wishes to register for both classes of insurance. There is also the condition that evidence should be presented to show that their business will be conducted in accordance with sound insurance principles.

A deposit is required to be made to the Accountant General at the time of registration. For each class of business a deposit of \$300,000 is required. This deposit is fixed and not related to the size of the company as the purpose of it is primarily to establish the bonafides of the Company. This deposit is in no way related to the insurance fund the companies will have to up keep (This is explained later). Every insurance company, at the time of registration, should also file with the Commissioner a statement of the premium rates which must

have a Certificate from a qualified actuary attached to it. The actuary before certifying should note the maximum rates of commission insurance companies can propose to pay to insurance agents. Subsequent charges in premium rates should also be accompanied by an actuarial certificate.

(iv) Maintenance of Funds

Insurance Companies are required to keep a register of Malayan policies and set up a fund from which claims may be paid. The fund is primarily for the security of the policy-holders and must be applied to that cause. The reserve for general insurance business is set at 40% of total assets of the Company. For life insurance it is determined actuarially. A prescribed percentage of the assets held on account of Malayan currency policies is required to be held in one or more of the local assets prescribed. The percentage is initially 25% and rises at the rate of 10% per annum until it reaches the maximum of 55%. Incidentally, this maximum rate is already reached and companies now follow this requirement. The assets of the fund should be kept in the States of Malaya or in the custody of a person approved by the Commissioner. This ensures that it would be possible to enforce the realisation of these assets for the benefit of the Malayan policy-holders as necessary.

(v) Annual Accounts

An insurance company is obliged to submit annually to the Insurance Commissioner the account returns including a revenue account and a balance sheet audited by a local auditor, statements of business and a statement showing the assets constituting the fund that is maintained. In the case of a company incorporated outside Malaya, these statements would relate to the business in the Federation alone, but copies of any report and accounts presented to the members should be submitted.

(vi) Insurable Interest and Minor's Right to Contract

It is specifically laid down that the insurable interest should exist at the time the life insurance is effected. It is also legal for a person to effect insurance on the life of the person's wife or husband, child or ward under the age of majority and of anyone who is wholly or partly dependent. (That an insurance can be effected on the life of a child or ward or a dependent is a significant variation from the English Law. Subject to certain safeguards, the Act gives minors capacity to contract).

(vii) Actuarial Valuation and Profits

Every insurance company should undertake an actuarial valuation of its assets and liabilities once

in every three years and lodge the report with the Insurance Commissioner. As in the case of the annual accounts, the reports would relate to the business in the Federation solely in the case of a foreign incorporated company, but copies of any valuation returns required to be made to an authority in the country of incorporation, should also be filed with the Insurance Commissioner.

Although the actual valuation basis to be adopted is not laid down, the actuarial liability should not be less than the liability that would be reflected under the statutory minimum basis. The test of adequacy of the life fund is thus on a basis fixed in the Act. The method prescribed as minimum basis is a net premium valuation with suitable provision for initial expenses. Payment of bonuses to policy-holders (if any) can only be allocated with the approval of the Actuary and conditions are laid down under which only a company may transfer the shareholder's share of profit from the Fund in Malaya.

(viii) Surrender Values, Paid up Values and Non-Forfeiture Provisions

If a policy is intended to be surrendered, minimum surrender values of life insurance policies are laid down. After a policy has been in force three years it may not lapse or being forfeited. It can be either continued in force by the payment of premiums from the possible surrender values of that policy or alternatively it can be continued in force for a reduced amount in the policy plan. This has to be approved by the Insurance Commissioner.

(ix) Miscellaneous

On matters such as death claims under life policies for amounts not exceeding \$10,000 may be paid to stated relatives without production of probate Letters of administration. Subject to suitable safeguards an amount equal to 90% of such claims may be paid before payment of Estate Duty.

All literature of the company such as proposal forms, policy forms, brochures and so forth have to be approved by the Insurance Commissioner.

(x) Impact of Legislation on the Business

The business was abused by the "mushroom" Companies. These companies were not operating on sound insurance principles and on the part of policy-holders it became a gamble on aged people as in the case of life insurance. Before the passage of the 1963 Act, insurance companies had only to deposit \$200,000 with the Accountant-General and set up a fund to commence business.

Now, the deposit is increased to \$300,000 for each class of business. Moreover, in the previous Ordinance (1948) there was no efficient supervision of the insurance companies. In fact the companies were allowed as much freedom as any other business enterprise. Nonetheless insurance is an industry which involves a great deal of public interest and should, therefore, come under closer scrutiny. Legislation then (under the Life and Fire Insurance Companies Ordinances 1948) was very limited and its powers were inadequate and restricted.

The present Act (1963 Insurance Act) empowers wide authority to the Insurance Commissioner to exercise strict surveillance over the industry. The practices of the insurance companies are now kept under-watch by the Insurance Commissioner. The examination of the accounts, actuarial valuations, the maintenance of a sufficient fund and other requirements such as insurable interests and surrender values, make certain that the policy-holders are secure while the insurance companies are compelled to operate on sound lines.

There is, however, no restriction imposed upon the companies' operations. They are free to operate so long as they conform to the principles. Their expansion in business and the manner in which they operate are entirely dependent upon the companies themselves. Certain controls exist in the Act to Channel the activities of the insurance companies to some beneficial goals. For instance, there is a condition that 55% of the investments in total assets of any insurance company with respect to the Malayan should be invested locally. This is to ensure that the investments are not made outside Malaysia, thereby, making available capital funds for the financing of capital projects in our country. As such it facilitates economic development. The requirement of a fund is another control. This maintenance of the fund is only appropriate with reference to the principles under which insurance companies ought to function. It serves as a security to meet future claims that will <sup>come</sup> from policy-holders. Another feature to enhance policy-holder's security is the choice of the nature of investments by insurance companies. This feature will affect the policy of the insurance companies. Therefore, certain assets are authorised assets.

The Act has, in fact, created an atmosphere of order out of a chaos. The new provisions in the Act make certain that the ill-practices are stamped out. More so, legislation has inculcated a sense of confidence in the public concerning the insurance industry and therefore,

placed the insurance image in its rightful berth. Legislation is far from imposing restrictions upon the expansion of the business. Instead it happily encourages expansion along sound lines. Therefore, there is scope for insurance companies.

(x1) Future of Legislation

The present legislation is quite adequate to enhance a steady growth of the insurance industry. But will legislation be further expanded in terms of more stringent provisions and ultimately leading to nationalisation of the industry? This latter line of action is popular to most developing countries. In Malaysia, however, there is no evidence that legislation would be carried that far in the near future. The present government believes in free enterprise in so far as the insurance companies do not go out of hand. The position of foreign incorporated companies operating in Malaya is quite good in the sense that they are not being discriminated.

In the opinion of the Insurance Commissioner this 1963 Act is quite well equipped with powers and authority to control the insurance business. The need for any major change in the near future is not anticipated.