



ANALYSIS

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1970-71, No. 25

An Act to require deposits from companies and persons carrying on various classes of insurance business

(8 March 1971)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the Insurance Companies' Deposits Act 1970-71.
 (2) This Act shall come into force on the first day of April 1971.

Price 30c

2. Interpretation - In this Act, unless the context otherwise requires, -

- "Agent" means any person who negotiates, or attempts to negotiate, or holds himself out as having authority to negotiate, on behalf of any underwriter, any contract of insurance relating to any class of insurance business; and includes any person who is deemed to be an agent of any other person under the provisions of section 3 of this Act:
- "Approved securities" means stock, bonds, debentures, or other securities issued by the Government of the Cook Islands or the Government of New Zealand, or by any City Council, Borough Council, County Council, Electric Power Board, Hospital Board, or Harbour Board in New Zealand:
- "Commonwealth company" means a company established or incorporated in, and having its chief office in, a Commonwealth country other than the Cook Islands:
- "Commonwealth country" means a country that is a member of the British Commonwealth of Nations; and includes every territory for whose international relations the Government of that country is responsible; and also includes the Republic of Ireland as if that country were a member of the British Commonwealth of Nations:
- "Commonwealth underwriter" means an underwriter who is ordinarily resident in a Commonwealth country other than the Cook Islands:
- "Company" means any association of persons, whether incorporated or not:
- "Depositor" means a person who has made any deposit with the Financial Secretary under this Act in respect of any class of insurance business:
- "Financial Secretary" means the Financial Secretary appointed under the provisions of the Public Moneys Act 1969:
- "Financial year", in relation to any person, means a year ending on the date of the annual balance of the accounts of that person, or, if there is no annual balance, a year ending on the thirty-first day of December:
- "Foreign Company" means a company that is neither a local company nor a Commonwealth company:
- "Foreign underwriter" means an underwriter who is not ordinarily resident in the Cook Islands and who is not a Commonwealth underwriter:

"Insurance business" includes every class of insurance business, except -

- (a) Life insurance (including endowment and annuity contracts); and
- (b) Marine insurance; and
- (c) Insurance against earthquake:

"Local company" means a company established or incorporated in, and having its chief office in the Cook Islands:

"Policyholder" means any person who is indemnified or deemed to be indemnified by any contract of insurance, whether or not a policy of insurance is issued; and includes any person claiming by, through, or under any policyholder:

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

"Underwriter" means a person named in a contract or policy of insurance as liable to pay or contribute towards payment in whole or in part of the sum secured by the contract or policy; but does not include a company.

3. Liability to make deposits - (1) Deposits with the Financial Secretary in accordance with the provisions of this Act shall be made by -

- (a) Every local company, Commonwealth company, or foreign company which at the passing of this Act is carrying on in the Cook Islands any class of insurance business, or which thereafter commences to do so:
- (b) Every person who at the passing of this Act is acting in the Cook Islands as an underwriter in respect of any class of insurance business, or who thereafter commences so to act:
- (c) Every person who at the passing of this Act is acting in the Cook Islands as agent of a Commonwealth underwriter or of a foreign underwriter in respect of any class of insurance business, or who thereafter commences so to act.

(2) For the purposes of this Act, every person who, in the course of his business, negotiates or attempts to negotiate directly or indirectly (whether through a broker or otherwise), any contract of insurance between -

- (a) Any company engaged in carrying on any class of insurance business or any underwriter (in this section referred to as the insurer); and
- (b) Any other person in the Cook Islands (in this section referred to as the insured) -

shall be deemed to be the agent of the insurer (whether or not he is also the agent of the insured), and, if the insurer is a company and enters into the contract of insurance, the insurer shall be deemed to be carrying on in the Cook Islands the class of insurance business to which the contract belongs.

(3) The fact that any person issues any cover note in respect of a contract of insurance, or gives any information that insurance has been effected, or issues any receipt or other document acknowledging the receipt of a premium in respect of a contract of insurance, or receives any premiums, proposals, or requests for insurance business shall, for the purposes of this section, be conclusive evidence that he is engaged in the business of negotiating or attempting to negotiate contracts of insurance.

(4) For the purposes of this Act, a person shall be deemed to act as the agent of an underwriter if that person acts in the Cook Islands as the agent or servant of a person carrying on business out of the Cook Islands as the agent of an underwriter.

(5) Nothing in this section shall impose an obligation to make a deposit under this Act on any person who, in negotiating or attempting to negotiate any contract of insurance, acts as the servant or authorised agent of an agent or underwriter by whom a deposit has been made in respect of that class of insurance business represented by the contract.

4. Amount of deposit - (1) Subject to the provisions of section 5 of this Act, the amount of the deposit to be made under this Act in respect of the several classes of insurance business shall be as specified in the Schedule to this Act.

(2) For the purposes of the Schedule to this Act, any person carrying on insurance business who issues or undertakes liability under policies or contracts of insurance against loss by or incidental to fire, whether other risks are included or not, shall be deemed to be carrying on fire insurance business (but not to the exclusion of any other class of insurance business):

Provided that -

- (a) A person carrying on the business of marine insurance shall not be deemed to carry on the business of fire insurance by reason only that loss by fire is one of the various risks covered by the marine policies issued by that person

- (b) A person carrying on the business of insurance against earthquake shall not be deemed to be carrying on the business of fire insurance by reason only that he insures against loss by fire consequential on earthquake;
- (c) If the Financial Secretary is satisfied that any policy or contract is principally one of insurance against loss due to causes other than fire though loss by fire is one of the various risks thereby covered, the person who issues or undertakes liability under the policy or contract shall not be deemed to be carrying on the business of fire insurance by reason only of the issue of or undertaking of liability under the policy or contract.

5. Reductions in deposits - (1) If the premium income in respect of any class of insurance business earned in the last financial year of the depositor ended before the passing of this Act or in any subsequent financial year by any local company or person to which or to whom this section applies is such that, if the amount of the deposit required by this Act in respect of that class of business were computed on the basis of a sum of two thousand dollars together with a further sum of two thousand dollars for each complete amount of five thousand dollars of that premium income, the deposit would be less than the amount of the deposit already made by the depositor in respect of that class of insurance business, the amount of the deposit required from the depositor in respect of that class of insurance business shall be reduced by the amount by which the deposit already made exceeds the deposit so computed.

(2) Where by reason of the provisions of this section a reduction in any required deposit shall be made the amount of that reduction shall be repaid to the depositor within six months after the end of the financial year in which the premium income is such that a reduction in the amount of the deposit is made.

6. When deposits to be made - (1) Every person who is required by this Act to make a deposit in respect of any class of insurance business carried on by him at the passing of this Act, and who has not already done so, shall make that deposit within one month after the commencement of this Act.

(2) Every company which hereafter proposes to commence to carry on in the Cook Islands any class of insurance business shall, before commencing that class of business, make the deposit required by this Act in respect of that class of business.

(3) Every person who hereafter proposes to commence to act in the Cook Islands as an underwriter or as an agent of a Commonwealth underwriter or of a foreign underwriter in respect of any class of insurance business shall, before commencing to do so, make the deposit required by this Act in respect of that class of business.

7. Deposits to be in approved securities - (1) Every deposit (including every increase of a deposit) made by any person shall be made by the deposit with the Financial Secretary of approved securities valued at not less than the amount of the required deposit.

(2) Any person who has deposited approved securities under the provisions of this Act may withdraw any securities so deposited on depositing with the Financial Secretary other approved securities:

Provided that the total value of the securities and money (if any) remaining deposited with the Financial Secretary on behalf of that person shall not be less than the amount required by this Act to be so deposited.

8. Manner in which deposits to be made or withdrawn -

(1) Every deposit made under this Act shall be made as follows:

- (a) In the case of approved securities that are payable to bearer, by the delivery of the securities to the Financial Secretary or to some person authorised by him in writing to receive them:
- (b) In the case of approved securities that are not payable to bearer, by the transfer of the securities to the Financial Secretary in such manner as shall be requisite to make him the legal owner thereof.

(2) Every withdrawal of securities made under this Act shall, unless the depositor otherwise directs in writing delivered to the Financial Secretary, be made by the transfer of the securities by the Financial Secretary to the depositor.

9. Increase of deposits where securities have depreciated -

(1) If the Financial Secretary is satisfied that by reason of depreciation in the value of securities or other cause the value of the approved securities together with the money (if any) deposited by any person under this Act falls short of the amount required by this Act, he may by notice in writing require the depositor to deposit with the Financial Secretary, within such time as the Financial Secretary specifies in the notice, approved securities to a value deemed by the Financial Secretary to be sufficient to bring the amount of the deposit to the value required by this Act.

(2) A notice under this section shall not be issued until after the Financial Secretary has given an opportunity to the depositor to be heard in connection with the matter.

(3) If any person fails to deposit with the Financial Secretary approved securities as required by the Financial Secretary under this section, that failure shall, for the purposes of sections 17, 18, and 19 of this Act, be deemed to be a default in complying with a requirement of this Act.

10. Valuation of approved securities - The Financial Secretary shall be the sole judge of the value of approved securities for the purposes of this Act, and his decision shall be final and binding.

11. Deposits to be held in trust for policyholders -

(1) Subject to the provisions of this Act, the Financial Secretary shall, as to every deposit made under this Act, hold the same as security for policyholders or claimants, in respect of policies or other contracts issued, granted, or entered into in the Cook Islands by the person making the deposit or in respect of which he has acted in the Cook Islands as agent of an underwriter, whether the policies or contracts have been granted or entered into before or after the passing of this Act:

Provided that the deposit made in respect of any class of insurance business shall be held in trust exclusively for policyholders and claimants as aforesaid in respect of that class of insurance business.

(2) For the purposes of subsection (1) of this section a policy or other contract of insurance shall be deemed to have been issued, granted, or entered into in the Cook Islands if it is in fact issued, granted, or entered into in the Cook Islands and also if the insurer or any agent of the insurer issues in the Cook Islands any cover note in respect of the contract or receives in the Cook Islands any proposal or premium in respect of the contract.

(3) Until all the rights and claims in the Cook Islands in respect of such policies or contracts as aforesaid are cancelled, annulled, or liquidated, the deposit shall not be liable to be attached or levied upon, or be subject to any debts of or claims against the depositor, without the previous consent in writing of the Minister responsible for finance, who may give his consent upon or subject to such terms and conditions as he thinks equitable, having regard to the interests of the persons as security for whom the deposits are held by the Financial Secretary.

(4) Upon application made by the Financial Secretary or by the depositor or by any person claiming to be one of the persons as security for whom the deposit is held, the High Court may make orders providing for the realisation of approved securities comprising or forming part of any deposit under this Act, and for the distribution or application of the proceeds of any such realisation and of any moneys deposited with the Financial Secretary and of any income from the deposit held by the Financial Secretary or thereafter arising; and the Court may direct the issue of such notices and advertisements and the making of such inquiries and generally may make such orders as the Court thinks fit in order that the security granted by this Act to policyholders and claimants may be made effective.

12. Income from deposits - Except in so far as may otherwise be provided in any order made by the High Court under section 11 of this Act, every depositor shall be entitled to receive from time to time the income payable or derived in respect of moneys or securities deposited by him.

13. Cover notes and receipts to refer to deposit -

(1) Every cover note and every receipt or other document acknowledging the receipt of a premium in respect of a contract of insurance issued by any agent or underwriter required to make a deposit under this Act in respect of the class of insurance business represented by that contract, or issued by any person acting as the servant or agent of any such agent or underwriter, at any time after the deposit is required to be made shall bear on the face thereof the name of the agent or underwriter by whom the deposit has been made, together with a statement to the effect that a deposit

has been so made and is available as security for the contract of insurance evidenced by the cover note, receipt, or other document as aforesaid.

(2) Every person who issues any such cover note, receipt, or other document as aforesaid that does not conform to the requirements of this section commits an offence, and is liable on conviction to a fine not exceeding one hundred dollars.

14. Statements to be supplied annually - (1) Every person required by this Act to make a deposit with the Financial Secretary shall, at the expiration of each financial year, prepare such statement in relation to that year, in such form, and containing such particulars as the High Commissioner from time to time, by Order in Executive Council, prescribes. Any such Order in Executive Council may prescribe different statements, forms, or particulars for different persons or classes of persons.

(2) Every such statement shall be audited by a person qualified to be the auditor of a company under the Companies Act 1970, and shall be printed or typewritten, and, together with three printed or typewritten copies thereof, shall be deposited with the Financial Secretary within four months after the close of the financial year to which it relates.

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

(4) The Financial Secretary shall forward one copy of each statement received under this section to the Minister responsible for finance, and shall forward another copy of each statement so received to the Minister in charge of the Department of Justice.

15. Penalty for false statement - Every person who signs or deposits any statement required by this Act, knowing the same to be false in any particular, is liable on conviction to a fine not exceeding one hundred dollars.

16. Withdrawal of deposits - (1) If any person who has made any deposit with the Financial Secretary under this Act in respect of any class of insurance business ceases to carry on that class of business in the Cook Islands, the depositor may withdraw that deposit -

(a) On the expiration of six months after service on the Financial Secretary of a notice in writing, duly signed on behalf of the depositor, stating that the depositor has ceased to carry on that class of business in the Cook Islands and proposes to withdraw the deposit; and

(b) On satisfying the Financial Secretary that from the date of the service of the notice the depositor has not, except as to policies or contracts granted or made before that date, carried on that class of business in the Cook Islands; and

(c) On satisfying the Financial Secretary that all the liabilities of the depositor in the Cook Islands in respect of that class of business are fully liquidated or provided for.

(2) For the purposes of this section a person in the Cook Islands shall be deemed to be carrying on a class of insurance business in the Cook Islands not only if he does so on his own account but also if he acts as agent of a Commonwealth underwriter or of a foreign underwriter in respect of that class of business.

(3) The Financial Secretary shall cause every such notice as aforesaid, and also his decision with regard to every such proposed withdrawal, to be published at the cost of the depositor in such manner as he thinks fit.

17. Penalty on default in complying with terms of Act - If any person makes default in duly and fully complying with any of the requirements of this Act affecting him, that person, and also his attorney, general agent, and every other agent, are severally liable on conviction to a fine not exceeding one hundred dollars for every day during which the default continues.

18. If default continues, person may be prohibited from carrying on business - If any such default as aforesaid is continued for a period of three months the Minister responsible for finance may, by notice published in the Gazette, prohibit the defaulting person from carrying on insurance business or any class of insurance business in the Cook Islands, either absolutely or for such time as he declares.

19. Further penalty for carrying on business after notice prohibiting - 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 18 of this Act receives any application for insurance, or accepts any premium for insurance, or otherwise carries on the business of that person in the Cook Islands in contravention of the notice, then, in addition to any penalty for which they may be liable under section 17 of this Act, all such persons are severally liable on conviction to a fine not exceeding two hundred dollars for each and every act so done in breach of the notice.

20. In any action incorporation of company need not be proved - In any action or other proceedings it shall not be necessary to show that a company has been incorporated, but it shall be sufficient to show that the company is carrying on business or has agreed or acted by the style or description by which it is made a party to any action or other proceedings.

21. Remuneration of Financial Secretary - The Financial Secretary shall be entitled to such reasonable remuneration from any depositor as may be agreed upon between the Financial Secretary and the depositor or, failing agreement, as shall be fixed by the Minister responsible for finance, either generally or in any particular case, for the Financial Secretary's services in respect of any approved securities deposited by any person under any of the provisions of this Act.

Section 4

SCHEDULEAMOUNTS OF DEPOSITS TO BE MADE

1. Preliminary - For the purposes of this Schedule, insurance business shall be divided into four classes, as follows:

- Class 1: Fire insurance business.
 Class 2: Employers' liability insurance business.
 Class 3: Third party risks insurance business.
 Class 4: All other kinds of insurance business, except -
- (a) Life insurance, including endowment and annuity contracts; and
 - (b) Marine insurance; and
 - (c) Insurance against earthquake.

2. Local Companies - Subject to the provisions of section 5 of this Act, the amounts of the deposits required to be made by each local company in respect of each class of insurance business carried on by the company shall be as follows:

| | \$ |
|----------|--------|
| Class 1: | 15,000 |
| Class 2: | 15,000 |
| Class 3: | 10,000 |
| Class 4: | 5,000 |

3. Commonwealth Companies - The amounts of the deposits required to be made by each Commonwealth company in respect of each class of insurance business carried on in the Cook Islands by the company shall be as follows:

| | |
|---|--------|
| Class 1: | 15,000 |
| Class 2: | 15,000 |
| Class 3: (subject to section 5 of this Act) | 10,000 |
| Class 4: | 5,000 |

4. Foreign Companies - The amounts of the deposits required to be made by each foreign company in respect of each class of insurance business carried on in the Cook Islands by the company shall be as follows:

| | |
|---|--------|
| Class 1: | 25,000 |
| Class 2: | 25,000 |
| Class 3: (subject to section 5 of this Act) | 15,000 |
| Class 4: | 10,000 |

5. Agents of Commonwealth Underwriters and Persons in the Cook Islands Acting as Underwriters - The amounts of the deposits required by each person in the Cook Islands acting as an underwriter and by each person in the Cook Islands acting as agent of a Commonwealth underwriter shall for each class of insurance business be as follows:

| | |
|---|--------|
| Class 1: | 10,000 |
| Class 2: | 10,000 |
| Class 3: (subject to section 5 of this Act) | 10,000 |
| Class 4: | 5,000 |

SCHEDULE - continued

6. Agents of Foreign Underwriters - The amounts of the deposits required to be made by each person in the Cook Islands who acts as agent of a foreign underwriter shall in respect of each class of insurance business be as follows:

| | \$ |
|---|--------|
| Classes 1, 2, and 4 (whether he acts as agent in respect of only one or more than one of those classes) | 25,000 |
| Class 3 (subject to section 5 of this Act) | 10,000 |

This Act is administered in the Treasury.