



ANALYSIS

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1984, No. 8

An Act to amend the Off-Shore Insurance Act 1981-82

(20 June 1984)

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

1. Short Title - This Act may be cited as the Off-Shore Insurance Amendment Act 1984 and shall be read together with and deemed part of the Off-Shore Insurance Act 1981-82 (hereinafter referred to as "the principal Act").

2. Application - The provisions of the principal Act as amended by this Act shall apply to all licence-holders and applicants for licences whether such licence was granted before or after the commencement of this Act or whether such application was made before or after the commencement of this Act.

3. Interpretation - Section 2 of the principal Act is amended:

- (a) by repealing the definition of "Insurance" and substituting the following definition:

"Insurance business" means an insurance business including the issuing of, or the undertaking of liability under policies of insurance, assurance, re-insurance or indemnity, including:

(a) policies ensuring payment of money on death or on the happening of any contingency dependent on the termination or continuance of human life;

(b) policies securing the grant of any annuity for a term dependent upon the termination or continuance of human life;

(c) policies whereby any person is to become entitled to a benefit in the event of the occurrence of death by accident or by some other cause specified in the contract, or of injury or disability caused by accident or sickness;

(d) policies whereby superannuation benefits, pensions or payments are payable to employees of an employer or their dependants on retirement disability or death;

(e) policies ensuring payment of a sum, or a series of sums, or money on a future date or dates in consideration of one or more premiums;

(f) policies of indemnity for the loss of, or damage to property to any kind including third party risks;

(g) policies of indemnity against damages payable to or in respect of the death, injury or disability of any persons howsoever caused, including third party risks;

(h) policies of guarantee or indemnity for loss of business profits, or against pecuniary loss howsoever arising or against risks of all kinds;

(i) all classes of underwriting."

(b) by repealing the definition of "Off-shore insurance business: and substituting the following definition:

"Off-shore insurance business" means the carrying on or conducting whether within or outside the Cook Islands of any insurance business where each of the insured, the person to whom the policy moneys are payable and the owner of the policy:

(a) is not domiciled in the Cook Islands;

(b) is not ordinarily resident in the Cook Islands;

(c) is not a company incorporated or registered in the Cook Islands under any legislation other than the International Companies Act 1981-82; or

(d) is a trustee company;

or any combination of these;"

(c) By inserting after the definition of "Off-shore insurance business" the following definitions:

"Owner", in relation to a policy, means the person who for the time being has the legal title to the policy and includes an assignee;

'Policy' means:

- (a) any policy or other contract of insurance and any policy, bond, certificate, receipt or other instruments evidencing the contract with the insurer or underwriter or any person named in a policy or other contract of insurance as liable to pay or contribute towards payment of the sum secured by the policy or contract;
- (b) an instrument evidencing a contract to pay an annuity;
- (c) any policy or other contract in relation to insurance business of any class under which there is for the time being an existing liability already accrued or under which a liability may accrue."

4. Off-shore insurance - Section 3 of the principal Act is repealed and the following section substituted:

"3. Off-shore insurance - (1) Subject to subsections (2) and (3) of this section no person, including a company, body corporate and an unincorporated body of persons, shall carry on or transact or hold himself out as carrying on or transacting any off-shore insurance business in or from the Cook Islands unless that person holds a valid off-shore insurance licence issue under this Part.

(2) A licence shall not be required for off-shore insurance business-

(a) transacted between companies as defined in the International Companies Act 1981-82 and which would be deemed to be related under the provisions of subsection (5) of section 4 of the International Companies Act 1981-82; or

(b) where the premiums payable are payable in any foreign currency and;

(i) the companies transacting the insurance business are companies defined in the International Companies Act 1981-82 and have a relationship of parent and subsidiary; or

(ii) more than one such company is the insured, the insurer, the underwriter or one of the underwriters in respect of, or the owner or one of the owners of the policy.

(3) Nothing in this Act shall require any person to hold a licence under this Act where the only insurance business transacted by that person is reinsurance ceded by a Licensee to that person.

(4) Every person including a body corporate and each director and other officer of a body corporate who contravenes the provisions of subsection (1) of this section commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding U.S\$30,000 or to both.

5. Place of business - Section 14 of the principal Act is amended by inserting after the words "trustee company" the words "or at its registered office in the Cook Islands."

6. Statutory funds - The principal Act is further amended by inserting after section 17 the following new section:

"17A Statutory funds - (1) Subject to this section, a Licensee may establish and maintain one or more statutory funds, under an appropriate name in respect of such part or parts of the off-shore insurance business carried on by it, as the Licensee so determines.

(2) Where a Licensee has established a statutory fund, it shall determine as soon as practicable thereafter that part or parts of its off-shore insurance business that relate to that statutory fund.

(3) A Licensee shall not determine that a particular policy or policies issued by it relate to a particular statutory fund unless the owner of the policy or the person who upon the issue or the policy will become the owner has consented in writing to the application of this section to the policy.

(4) All amounts received by a Licensee in respect of any part of its off-shore insurance business in respect of which it has established a statutory fund, shall be carried to and become assets of that fund.

(5) The assets of a statutory fund shall not be available to meet any liabilities or expenses of the Licensee other than liabilities or expenses referable to that part or parts of the off-shore insurance business which that statutory fund relates.

(6) A Licensee shall not mortgage or charge any assets of any statutory fund other than with the consent of all owners of policies issued in respect of off-shore insurance business to which that statutory fund relates.

(7) The assets of each statutory fund shall be kept distinct and separate from all other assets of the Licensee.

(8) The income arising from the investments of the assets of any statutory fund shall be carried to that fund.

(9) The assets of every statutory fund maintained by a Licensee may be invested (subject to any provisions in the instruments constituting the Licensee or in the articles of association or other rules of the Licensee or in the articles of association or other rules of the Licensee which impose restrictions upon the manner in which the assets of the Licensee may be invested) in such manner as the Licensee thinks fit.

7. Reinsurance - The principal Act is further amended by inserting after section 17A as inserted by section 6 of this Act the following new section:

"17B Reinsurance - (1) Subject to subsection (2) of this section a Licensee may effect re-insurance in respect of any off-shore insurance business undertaken by it and may assign to the owner of a policy the rights of the Licensee against the re-insurance in respect of any particular policy. In the event of such an assignment being effected the owner of the policy shall continue to have rights against the Licensee only to the extent that the risk covered by the policy issued by the Licensee have not been so re-insured.

(2) An assignment pursuant to subsection (1) of this section shall be valid only if the owner of the policy has consented in writing to this section applying or if the person who will become the owner of a policy upon its issue has so consented prior to the issue of the policy.

(3) Nothing in this section shall restrict the ability of a Licensee to effect re-insurance without an assignment pursuant to subsection (1) of this section."

8. Power of exemption - The principal Act is further amended by inserting after section 23 the following new section:

"23A Power of exemption - (1) The Minister may of his own motion or pursuant to an application in writing lodged with the Monetary Board by a Licensee or a company incorporated or registered under the International Companies Act 1981-82 exempt such Licensee or company from all or any part of the provisions of this Act or any regulations made under this Act and may impose such terms and conditions as he thinks fit as a condition under which such exemption is granted. An exemption granted under this subsection may be revoked by the Minister at any time.

(2) In dealing with an application the Minister shall not be required to act judiciously and his decision in all cases shall be final."

9. Penalty - Section 24 of the principal Act is repealed and the following section substituted:

"24. Penalties - Every person including a body corporate and each director and other officer of a body corporate who contravenes the provisions of this Act commits an offence and shall be liable upon conviction where no other penalty is provided to a term of imprisonment not exceeding 2 years or to a fine not exceeding U.S.\$10,000 or both.

This Act is administered by the Cook Islands Monetary Board