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AUSTRALIAN REINSURANCE MARKET BILL 1986

(Private Senator's Bill)

Date introduced: 6 November 1986
House: Senate
Presented by: Senator the Hon. David Vigor

DIGEST OF BILL

Purpose

To establish an Australian Reinsurance Authority to carry on the business of reinsurance in Australia.

Background

Reinsurance is an arrangement where original or direct insurers, who have written direct business, can distribute their potential liability by placing part of their risks to another insurer (the reinsurer) with the object of reducing the amount of their possible losses. The legal principles applicable to an ordinary contract of insurance between an insurer and insured will apply equally to a contract of reinsurance. Insurance companies regularly enter into reinsurance agreements or "treaties" where they have accepted greater risks than they are prepared to bear on their own.

The Insurance Act 1973 provides that only Lloyds insurers and bodies corporate can carry on insurance business in Australia and they must be authorised to do so.[1] Insurance business is defined in the Act to include reinsurance business (sub-section 3(1)). However, most reinsurance treaties are negotiated with overseas reinsurers.[2]

A company wishing to enter the insurance business must first satisfy the Treasurer that it has adequate reinsurance arrangements (section 23(d)). The Insurance Commissioner must approve the reinsurance arrangements and, amongst other things, the Commissioner will have regard to

who is offering the reinsurance (sub-section 34(3)(e)). It is sometimes difficult to assess the security offered by an overseas reinsurer; information concerning the funds and liquidity of overseas companies is not always readily available.[3] There is no overall regulation of the international trade in insurance and often an innocent party cannot recover against an unscrupulous reinsurer.

Every year an estimated \$2 billion leaves Australia in insurance and reinsurance premiums.[4] Of this amount more than \$1.3 billion is reinsurance premiums from the private sector. In 1984-85, private sector business placed directly with Lloyds' syndicates in Australia amounted to \$110 million. The Western Australian Development Corporation is planning to open the first Australian International Insurance Exchange in Perth in 1987. The exchange in Perth hopes to service the South-East Asia and Pacific rim region along the lines of Lloyds of London and the North American exchanges.

Main Provisions

Words and phrases used in the Bill are defined in clause 3.

An Australian Reinsurance Authority (the Authority) is established by clause 6. The Authority will carry on the business of reinsurance (clause 7) and its aims will be to attract the reinsurance business of Australian insurance companies (clause 8).

The Authority will have power to do all things necessary to the carrying out of reinsurance business (clause 9). However, the Authority will be restricted to dealing with contracts for reinsurance only (clause 10). The Authority will be able to enter into agreements with bodies outside Australia for the purpose of sharing a risk (clause 11) and other companies will be prohibited from entering into agreements (clause 12).

A Board of Management of the Authority (the Board) will be established by clause 14. The Board will control the Authority and determine Authority policy (clause 15). Clause 16 to 24 deal with the membership of the Board, delegation by the Board, members' remuneration, leave, resignation, termination of appointments, disclosure of interests, acting appointments and meetings.

There will be a Managing Director and Deputy Managing Director of the Authority (clause 25). The duties of the Managing Director and the Deputy Managing Director, their appointment, the prohibition against them taking other employment, their remuneration, leave, provision for resignation, termination of appointment, disclosure of interests and acting appointments are dealt with by clauses 26 to 34 of the Bill.

The Board will fix the rate of charge at which the Authority is prepared to enter into contracts of reinsurance (clause 38). The financial policy of the Authority will be based on sound commercial principles (clause 39). The Commonwealth will loan the Authority its capital (clause 40). The Minister will determine how the profits of the Authority are to be applied (clause 43). The Authority will be able to borrow money with the Minister's approval (clause 44). The Authority will be a public authority to which the Audit Act 1901 applies and will be subject to taxation (clause 46).

As it currently stands, clause 47 requires the Minister to report to the Minister on the conduct of the Authority (presumably it will be the Board which will be required to report to the Minister).

Non-compliance with a provision of the Bill will not invalidate a contract of reinsurance entered into by the Authority (clause 49). The Minister's powers under the Bill may be delegated (clause 50). It will be an offence for past and present members of the Boards and officers and employees of the Authority to pass on information regarding any person who has dealt with the Authority for the purposes of the Bill (clause 51). When applying for a contract of reinsurance or claiming under such a contract, it will be an offence to wilfully make a false or misleading statement (clause 52). Every quarter the Authority will have to supply the Minister with a return stating the contract of reinsurance which have been entered into and are in force (clause 53). The Governor-General will be able to make regulations not inconsistent with the Bill and in particular will be able to prescribe penalties not exceeding a fine of \$200 or imprisonment for six months (clause 54).

For further information, if required, contact the Economics and Commerce Group.

References

1. Sutton, K.C.T., Insurance Law in Australia and New Zealand, Law Book Company 1980, p.570.
2. Thomas, R.G., Guidebook to Insurance Law in Australia and New Zealand, CCH 1981, p.18.
3. Ibid., 2.
4. Tyndale, P., Australia to Have Its Own Insurance Exchange, Financial Review, 29 July 1986.

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