

DRAFT INSURANCE BUSINESS (AMENDMENT No. 4) (JERSEY) LAW 200

**Lodged au Greffe on 17th September 2002
by the Finance and Economics Committee**



STATES OF JERSEY

STATES GREFFE

150

2002

P.162

Price code: C

European Convention on Human Rights

The Vice-President of the Finance and Economics Committee has made the following statement -

In the view of the Finance and Economics Committee the provisions of the Draft Insurance Business (Amendment No. 4) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy D.R. Maltwood of St. Mary**

REPORT

Introduction

The Edwards Report contained a few recommendations concerning the regulation of insurance business that, because of their relatively minor nature, were given low priority in the implementation project relating to the Report as a whole. The Draft Insurance Business (Amendment No. 4) (Jersey) Law 200 (the “draft Law”) has been produced to include these recommendations.

The draft Law also contains matters arising from the Core Principles of Insurance Supervision issued by the International Association of Insurance Supervisors in October 2000, the exercise by the Law Draftsman’s Office to consolidate the Island’s laws, and one practical issue that has arisen from the operation of the Insurance Business (Jersey) Law 1996 since its inception.

The draft legislation has been subject to consultation with the Jersey Finance Industry Association, the Edwards Working Group on Insurance and other interested industry parties. All those concerned have indicated that the draft legislation is acceptable in its current form.

Background

The Insurance Business (Jersey) Law 1996 came into force on 1st October of that year, and was intended to ensure that all insurance companies carrying on business in or from within the Island were licensed to conduct such business and subject to prudential supervision. As at 31st July 2002, there were 160 licences in force issued to insurance companies wishing to carry on business in Jersey either directly or through intermediaries, and 18 licences to Jersey-based insurance companies offering their products internationally.

It is important to maintain a regulatory regime for insurance business in Jersey that reflects international best practice if this element of financial services is to grow. Proper regulation is also a key element of the maintenance of the Island’s reputation. The Commission therefore believes that it is necessary to introduce these amendments to the existing Law as they do indeed reflect international standards, best practice and the recommendations of independent external review.

The provisions of the Law

Article 2

The term “carrying on insurance business” is used throughout the Insurance Business (Jersey) Law 1996, yet the interpretation of the meaning of “carrying on” varies by jurisdiction. The existing definitions exist only in case law, and are therefore amended from time to time. Because such case law arises in the U.K., the U.S.A. and other overseas jurisdictions, it can be contradictory or not specifically attributable to Jersey’s situation.

As a result, there are a few insurance companies, not having any physical presence in the Island but offering their products through brokers or other intermediaries located in Jersey, who consider that they are not carrying on insurance business in the Island by this means because of the definition of “carrying on” in their home jurisdiction.

This is at odds with the majority of companies, who accept that such activity does constitute carrying on business and obtain the necessary permit under the existing Law.

Article 2 is therefore intended to clarify this situation and to ensure that all insurance companies offering their policies through intermediaries are treated in the same way under the Law and are required to obtain an insurance business permit.

Article 3

Paragraph (a) of this Article specifically introduces additional grounds for the refusal of an application for an insurance business permit. The grounds relate to the “fit and proper” assessment of an applicant, are identical to those contained in the Financial Services Law, and have been included on the recommendation of the Edwards Report.

Paragraph (b) of this Article contains revised wording of the provision relating to offences of failing to comply with permit conditions. It is part of the Law Draftsman’s exercise to consolidate the Island’s legislation, and brings these provisions into line with those contained in other financial services laws.

Articles 4 and 5

These Articles also relate to offences and penalty provisions, and bring the insurance law into line with other financial services laws.

Article 6

Recent solvency problems in some insurance companies and two prominent corporate failures have highlighted the duties and responsibilities of the appointed actuary. Although the insurance law requires the appointment of an actuary, it does not define what the actuary has to do.

The Edwards Report recognised that, in practice, actuaries appointed to Jersey insurance companies are properly carrying out their responsibilities, but suggested that a definition should be inserted into the legislation.

Because the role of the appointed actuary is subject to change from time to time, Article 6 enables Orders to be prepared to impose duties on actuaries and on permit holders in respect of their actuaries. A General Provisions Amendment Order has been produced in draft, but this cannot be formally adopted until the enabling provisions contained in the draft Law have been enacted.

Articles 7 and 10

As in the U.K., the approval of the Royal Court in Jersey is required to transfer long-term insurance assets and liabilities from one insurance company to another (usually as a result of merger or acquisition). The recent Finance and Markets Act in the U.K. have extended this requirement to general insurance business, so the opportunity has been taken to make the same provision in Jersey law.

Article 8

This Article widens the circumstances where an advertisement for insurance issued outside Jersey may be treated as issued in the Island. This amendment has been prompted by the increasing use of the internet as a sales medium.

Article 9

Since 1996, various firms in the Island have raised the matter of insurance policies erroneously or unlawfully issued to Jersey residents by companies not authorised under the Law. The position in case law is that such policies are void, but this may not necessarily represent the best interests of the policyholder, who may wish to continue with the policy.

The Article provides for such contracts to be unenforceable rather than void, and contains a mechanism for the recovery of money paid or property transferred. The wording has been based on the equivalent provisions contained in U.K. legislation.

Conclusion

The Insurance Business (Amendment No. 4) (Jersey) Law 2000 aims to bring the Island's insurance legislation up to date and to incorporate elements of regulatory best practice that have not hitherto been specified within the existing Law. This draft Law has no implications for the financial or manpower resources of the States.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 7th August 2002 the Finance and Economics Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Finance and Economics Committee the provisions of the Draft Insurance Business (Amendment No. 4) (Jersey) Law 2000- are compatible with the Convention Rights.

Explanatory Note

This draft Law amends the Insurance Business (Jersey) Law by -

- (a) defining carrying on insurance business in or from within the Island (*Article 2*);
- (b) providing an additional ground on which the Commission may refuse to grant a permit and revising the wording of the provision relating to continuing offences of failing to comply with a condition of a permit (*Article 3*);
- (c) revising the wording of the provision relating to continuing offences of failing to submit a financial statement and auditor's report (*Article 4*);
- (d) clarifying the wording of the offence and penalty provisions in respect of giving notice relating to the appointment of directors, etc under Article 22 (*Article 5*);
- (e) enabling Orders to impose duties on actuaries and on permit holders with respect to their actuaries (*Article 6*);
- (f) widening the circumstances where an advertisement for insurance issued outside the Island is treated as issued in the Island to include means of communication other than a publication or broadcast (*Article 8*);
- (g) providing for insurance contracts entered into in contravention of Article 4 (prohibition of carrying on insurance business unless authorised) to be unenforceable against the other party (as opposed to completely void for illegality) and to provide a mechanism for recovery of monies paid or property transferred (*Article 9*); and
- (h) extending the requirement that the approval of the court is required to transfer long term business from one insurance company to another to cover all types of insurance (*Articles 7 and 10*).

INSURANCE BUSINESS (AMENDMENT No. 4) (JERSEY) LAW 200

A LAW to amend further the Insurance Business (Jersey) Law 1996; sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

In this Law “principal Law” means the Insurance Business (Jersey) Law 1996,^[1] as amended.^[2]

ARTICLE 2

After Article 4(2) of the principal Law^[3] there shall be inserted the following paragraph -

“(2A) The carrying on of insurance business in or from within the Island includes obtaining or seeking to obtain such business from a person incorporated, registered or resident in the Island by means of a contract or other arrangement with another person where -

- (a) the sole or principal purpose of such contract or other arrangement is the obtaining of or seeking to obtain such business; and
- (b) that other person gives effect to the contract or other arrangement in or from within the Island.”.

ARTICLE 3

In Article 6 of the principal Law^[4] -

- (a) after paragraph(4)(a) there shall be inserted the following sub-paragraph -

“(aa) having regard to the information before the Commission as to the -

- (i) integrity, competence, financial standing, structure and organisation of the applicant;
- (ii) persons employed by or associated with the applicant for the purposes of his business or any shareholder controller of the business; and
- (iii) description of the business which the applicant proposes to carry on,

the Commission is not satisfied that the applicant is a fit and proper person to be a permit holder;”;

- (b) for paragraph (12) there shall be substituted the following paragraphs-

“(12) A person who fails to comply with a condition imposed under this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or a fine, or both.

(13) An offence under paragraph (12) may be charged by reference to a day or any longer period of time and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.”.

ARTICLE 4

For Article 18(3) of the principal Law^[5] there shall be substituted the following paragraphs -

“(3) A permit holder who fails to comply with any provision of this Article shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.^[6]

(4) An offence under paragraph (3) may be charged by reference to a day or any longer period of time and a permit holder may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.”.

ARTICLE 5

For paragraphs (10) to (13) of Article 22^[7] there shall be substituted the following paragraphs -

“(10) A permit holder who -

- (a) fails to give notice in accordance with paragraph (1); or
- (b) fails to comply with the requirements of a notice under paragraph (5),

shall be guilty of an offence.

(11) A person who -

- (a) becomes a director, chief executive or shareholder controller; or
- (b) continues to be a director, chief executive or shareholder controller,

in relation to a permit holder, following service on him of a notice of objection under paragraph (6) or (7) in that connection, shall be guilty of an offence.

(12) A person guilty of an offence under paragraph (10) or (11) shall be liable to imprisonment for a term not exceeding two years or a fine, or both.

(13) An offence under paragraph (10) or paragraph (11)(b) may be charged by reference to a day or any longer period of time and a permit holder may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.”.

ARTICLE 6

In Article 24 of the principal Law^[8] -

(a) after paragraph (3) there shall be inserted the following paragraph-

“(3A) A person appointed under paragraph (1) shall have such duties and responsibilities as may be prescribed and where such person contravenes or fails to comply with any Order made under this paragraph, the Commission may require the permit holder to terminate his appointment within such period as the Commission may specify.”;

(b) after paragraph (4) there shall be inserted the following paragraph-

“(4A) The Commission may require the permit holder to cause the person appointed under paragraph (1) to take such action as the Commission may specify within such period as the Commission may

specify.”; and

(c) for paragraph (5) there shall be substituted the following paragraph-

“(5) If a permit holder fails to comply with a requirement specified in paragraphs (3A), (4)(b) or (4A) within the relevant time period he shall not effect any contract which constitutes long term business until he has complied with it.”.

ARTICLE 7

In Article 26 of the principal Law^[9] for the words “long term business” there shall be substituted the words “insurance business” and in the heading to that Article for the words “long-term business” there shall be substituted the words “insurance business”.

ARTICLE 8

For Article 33(7) of the principal Law^[10] there shall be substituted the following paragraph -

“(7) For the purposes of this Article an advertisement for insurance issued outside the Island shall be treated as issued in the Island if it is directed to persons in the Island or is made available to them otherwise than in a publication, broadcast or other means of communication that is principally directed or made available to persons outside the Island.”.

ARTICLE 9

In Part IV of the principal Law, before Article 38^[11] there shall be inserted the following Article -

“ARTICLE 37A

Insurance contracts effected in contravention of Article 4

(1) Subject to paragraph (3), a contract of insurance entered into by a person in the course of carrying or insurance business in contravention of Article 4 shall be unenforceable against the other party and that party shall be entitled to recover any money or other property paid or transferred by him under the contract, together with compensation for the loss sustained by him as a result of having parted with it.

(2) The compensation recoverable under paragraph (1) shall be such as the parties may agree or as a court may, on the application of either party, determine.

(3) A court may allow a contract to which paragraph (1) applies to be enforced or money or property paid or transferred under it to be retained if it is satisfied -

(a) that the person carrying on insurance business reasonably believed that his entering into the contract did not constitute a contravention of Article 4; and

(b) that it is just and equitable for the contract to be enforced or, as the case may be, for the money or property paid or transferred under it to be retained.

(4) Where a person elects not to perform a contract which by virtue of this Article is unenforceable against him or by virtue of this Article recovers money or property paid or transferred under a contract, he shall not be entitled to any benefits under the contract and shall repay any money and return any other property received by him under the contract.

(5) Where any property transferred under a contract to which this Article applies has passed to a third party the references to that property in this Article shall be construed as references to its value at the time of its transfer under the contract.

(6) A contravention of Article 4 shall not make a contract of insurance illegal or invalid to any greater extent than is provided in this Article; and a contravention of that Article in respect of a contract of insurance shall

not affect the validity of any re-insurance contract entered into in respect of that contract.”.

ARTICLE 10

In the Second Schedule to the principal Law^[12] -

- (a) in paragraph 1 for the words “long term business carried on in the Island” there shall be substituted the words “insurance business carried on in or from within the Island”;
- (b) in paragraph 4(b)(ii) the words “long term” shall be deleted; and
- (c) in paragraph 7 for the words “long term business of the class or classes” there shall be substituted the word “the insurance business”.

ARTICLE 11

Citation and commencement

This Law may be cited as the Insurance Business (Amendment No. 4) (Jersey) Law 200~~0~~ and shall come into force on the seventh day following its registration.

[1] Volume 1996-1997, page 81.

[2] Volume 1996-1997, page 552, Volume 1998, pages 274 and 427, Volume 1999, pages 420 and 526, Volume 2000, page 701 and Volume 2001, page 113.

[3] Volume 1996-1997, page 89.

[4] Volume 1996-1997, page 92 and Volume 1998, pages 276 and 428.

[5] Volume 1996-1997, page 109.

[6] Volume 1992-1993, page 437.

[7] Volume 1996-1997, page 113.

[8] Volume 1996-1997, page 116 and Volume 1998, page 276.

[9] Volume 1996-1997, page 118.

[10] Volume 1996-1997, page 124.

[11] Volume 1996-1997, page 128, Volume 1998, page 277 and Volume 1999, page 526.

[12] Volume 1996-1997, page 142 and Volume 1998, page 432.