Sri Lanka Legislative Drafting Workshops

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SOME SUGGESTIONS FOR THE INSURANCE BILL

1. Short title.

2. Coming into force

3. Application

(1) In this Act: --

a. 'insurance company' means an entity whose principal business consists in making contracts of insurance between itself and policy-holders;

b. 'policy-holder' means a person who has contracted with an insurance company for a life insurance policy;

c. 'life insurance' means a system of insurance in which, in exchange for payments made to the company during the lifetime of the policy-holder, an insurance company promises to pay, on the death of a policy-holder, a sum to the policy-holder's beneficiaries.

(2) This Act applies only to the system of life insurance.

4. Objectives

(1) In this Act:

a. 'customer' means a person who has begun a negotiation with an insurance agent, an insurance broker or an insurance company looking towards entering upon a contract for an insurance policy;

b. 'insurance agent' means a person employed by an insurance company to sell insurance;
c. "insurance broker" means a person in the business of negotiating for a fee contracts between policy-holders and insurance companies;

(2) A person shall interpret this Act to achieve the following objectives:

a. To protect customers and policy-holders from overreaching by insurance agents, insurance brokers and insurance companies; and

b. to ensure the financial stability of insurance companies.

PART ONE. DUTIES OF AGENTS, BROKERS AND INSURANCE COMPANIES

CHAPTER I. DUTIES OF AGENTS AND BROKERS

5. License required

(1) In this Act, "Insurance Board" means the Board established pursuant to section ??.

(2) Unless pursuant to Chapter ??, a person has obtained a license so to act from the Insurance Board, a person may not work as an insurance agent nor as an insurance broker nor pretend to be an insurance agent or an insurance broker.

6. Fiduciary obligations

(1) Towards a customer, a policy holder and an insurance company with whom the agent or broker deals in the capacity of insurance agent or insurance broker an insurance agent or an insurance broker shall behave with the highest degree of candor, honesty and good faith.

(2) An insurance agent or an insurance broker shall disclose to a customer, a policy holder or an insurance company information relevant to the insurance contract or its performance which the agent or broker has and which the agent or broker has reason to suspect that the customer, policy holder or insurance company does not have.
(3) An insurance agent and an insurance broker may not give an assurance to a customer, a policy-holder or an insurance company the performance of which may require that the agent or broker act in violation of this Act.

7. Money delivered to an agent or broker on behalf of a customer, policy-holder or insurance company.

An insurance agent or insurance broker who has received money from a customer, policy-holder or insurance company and who has agreed to deliver that money to another person: --

a. holds that money as trustee for the person to whom the agent or broker has agreed to deliver it;

b. may not commingle that money with the agent or broker's own funds; and

c. shall deliver the money received to the person to whom the agent or broker has agreed to deliver it with all reasonable diligence and promptness.

8. Agents and Brokers to Obey Requirements of the Insurance Board

(1) An insurance agent or an insurance broker shall conform to the regulations made by the Insurance Board pursuant to section ??.

(2) On demand, an insurance agent or an insurance broker shall admit to its business premises and make available to a representative of the Insurance Board a document that the representative requires, and shall make available for interviews by the representative an employee or agent of the insurance company.

CHAPTER II. DUTIES OF INSURANCE COMPANIES

9. License required

Unless pursuant to Chapter ??, a person has obtained a license so to act from the Insurance Board, a person may not enter upon a policy of insurance in the capacity of an insurance company, nor otherwise act as an insurance company.

10. Fiduciary obligation
(1) Towards a customer or a policy holder an insurance company with whom the insurance company deals in the capacity of insurance company, the insurance company shall behave with the highest degree of candor, honesty and good faith.

(2) An insurance company shall disclose to a customer or a policy holder information relevant to the insurance contract or its performance which the insurance company has and which the insurance company has reason to suspect that the customer or policy holder does not have, or which the customer or policy holder demands.

11. Liability for acts of an insurance agent

An insurance company shall perform obligations undertaken on the company's behalf by its agent acting within the scope of the agent's actual or apparent authority.

12. The insurance policy

Except if a member of the bar of Sri Lanka represents a policy holder at the time of executing a contract of for an insurance policy: --

a. an insurance company may not execute a contract for an insurance policy, nor issue a policy, written in language that a reasonable person with eight years of formal schooling could not understand; and

b. a person shall interpret a contract for an insurance policy, or an insurance policy, strictly against an insurance company that executed the contract or issued the policy.

13. Obligations of the Insurance Company upon an Insurance Policy

(1) Except pursuant to subsection (2), if an insurance company's obligations under a contract of insurance differs from the obligations prescribed by regulations that pursuant to section ?? the Board of Insurance may issue, the company shall perform both the obligations required by the policy and those required by the regulations.

(2) Notwithstanding subsection (1), if an obligation of an insurance
company contradicts an obligation under the regulations mentioned in subsection (1), the policy-holder may elect which obligation the company shall perform.

14. **Insurance Companies to Obey Requirements of the Insurance Board**

   (1) An insurance company shall conform to the regulations made by the Insurance Board pursuant to section ??.

   (2) On demand, an insurance company shall admit to its premises and make available to, a representative of the Insurance Board a document that the representative requires, and shall make available for interviews by the representative an employee or agent of the insurance company.

15. **Use of Insurance Funds; Permitted Investments**

    **PART TWO. IMPLEMENTATION**

    **CHAPTER 3. THE INSURANCE BOARD**

16. **Establishment of the Board; Terms of Office**

17. **Regulations**

   (1) [Subjects to include --

   a. provisions of the insurance policy, e.g., grace period, reinstatement after default, non-contestability clause, indefeasible vesting of paid-in funds, borrowing against the paid-in fund, use of fund in case of default, prompt payment to beneficiary, disposing funds in case of a lost insured, interest on paid-in funds, etc.;

   b. required investments and limits on permissible investments by an insurance company;

   c. prohibitions against insider loans by insurance company;

   d. fiduciary obligation of directors and managers to policy-holders as well as to shareholders.
e. powers of Board --

i. to make spot inspections of insurance companies;

ii. to require periodic and special reports from insurance companies, brokers and agents;

iii. to determine actuarial tables for use in setting life insurance rates;

iv. to approve life insurance rates;

v. periodic audits of insurance companies and brokers

vi. to require bonds for agents and brokers;

vii. etc.]

18. Criteria for making regulations; procedures.

19. Office of Consumer Affairs; the Consumer Advocate

[The Board to contain an Office of Consumer Affairs, headed by the Consumer Advocate, with duties and powers to represent consumer interests in all decision-making by the Board, and before the Insurance Ombudsman]

CHAPTER 4. THE MINISTER

20. Powers and Duties [see present draft]

CHAPTER 5. THE INSURANCE OMBUDSMAN

21. Establishment

22. Powers and duties

[To hear and determine complaints by customers and policy-holders and beneficiaries against insurance agents, brokers and companies].

CHAPTER 6. LICENSING INSURANCE AGENTS AND BROKERS

[Including proceedings for cancellation of a license]

CHAPTER 7. LICENSING INSURANCE COMPANIES

CHAPTER 8. APPEALS
PART THREE. SANCTIONS

PART FOUR. FUNDING

[Including procedures for revoking licenses and for receivership]