Sri Lanka Legislative Drafting Workshops

Seidman, Robert B.

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Boston University
DRAFT NEW INSURANCE LAW.

The Control of Insurance Act No. 25 of 1962 was enacted at a juncture when the Insurance Corporation of Sri Lanka was given the complete monopoly over new business and was specially introduced to service the existing policies of the private insurance companies existed prior to nationalisation of insurance industry in 1962. The major amendment made subsequently was that of Insurance Control (Amendment) Act No. 42 of 1986 through which private insurers and insurance brokers were permitted to enter into the market again. This amendment was also expected to ensure the orderly functioning of the insurance sector as well as the protection of policy holders rights.

Since then a number of private insurers and insurance brokers have commenced operation in the market. Further the two state owned Insurance Corporations have been converted into the Public Companies Act in 1993, thereby bringing them also under the Control of Insurance Act. (Prior to this conversion, the two corporations operated under separate statutes and they did not come under the supervision of the Controller of Insurance.)

With the proliferation of insurers and brokers more power and authority are required for the Insurance Supervisory Authorities in order to effectively ensure that insurers are financially solvent and operate in the market in an orderly manner. For this purpose a number of amendments have been proposed to the existing Control of Insurance Act in an attempt to eliminate certain weaknesses identified in the existing legislation.

MAIN FEATURES OF THE DRAFT NEW INSURANCE LAW.

1. Establishment of an Insurance Board.

It is suggested that a Statutory Board called the Insurance Board be established (in place of the present Controller of Insurance) for developing, supervising and regulating the insurance industry in Sri Lanka. The Board will consist of seven members appointed by the Minister. Initially it will be financed by the Treasury and at a latter stage from a cess not exceeding ½% of the net premium income of each Insurance Company. The Minister will be empowered to issue general directives to the Board on matters of policy, applicable to the Insurance Industry.
2. Registration of Insurers

All insurers operating in Sri Lanka would have to be registered and licensed by the Board. To qualify for registration an insurer would have to be a Public Company established under the Companies Act, should have a Paid up share Capital not less than a minimum amount prescribed, pay a deposit to the Treasury of an amount prescribed, pay the prescribed fees and should fulfil other requirements to be determined by the Board. There will be no provisions for annual licensing as in the present Act but an annual fee is payable. The Board could also suspend or cancel the licence of an insurer giving reasons.

3. Registration of Intermediaries

(a) Agents

Only individuals would be permitted to be employed as Agents by insurers or by brokers. They need not be registered or licensed by the Insurance Board but the Board will receive a list of such Agents from Insurers and Brokers. However the Board could request an insurer or broker to remove any agent. Institutional Agents will not be recognised under the new Law. To compensate corporate entities for the removal of right to be institutional agents they will be made eligible for a quantity discount from the premium.

(b) Brokers

Brokers should be Corporate entities and should have a minimum prescribed share capital. They should employ or have on its directorate persons with qualifications or experience acceptable to the Board. Brokers would be registered by the Board on an annual basis.

4. Common interests

An insurance broker will not be permitted to own shares in any insurance company and vice-versa to avoid conflicts of interest.

5. Power to Fix Rates of Tariff

The Insurance Board could prescribe minimum tariff rates in respect of motor, fire and employers liability insurance and also the maximum tariff in respect of motor insurance.

6. Commission Rates

The Board could prescribe maximum rate of commission to be paid by an insurer to intermediaries.
7. **Collection of Premium by Agents and Brokers.**

Agents and Brokers should not delay the remittance of premium collected by them on behalf of an insurer beyond two weeks.

8. **Proposals and Policy Forms**

Copies of all insurance proposals and policy forms should be submitted to the Board for its information and the Board could require insurers to make any amendments if necessary.

9. **Advertisements**

Advertisements issued by insurers and intermediaries should not mislead the public.

10. **Principal Officers**

Registered Insurers and brokers should appoint a principal officer. The Board could prescribe minimum qualifications required to be a principal officer and could object to his appointment if found not fit and proper to hold that position.

11. **Register of Policies**

Every insurer and broker should maintain a register of policies in a prescribed form containing relevant details.

12. **Other business interests.**

No insurer or broker without the approval of the Board shall carry out any business other than the insurance business for which he is registered.

13. **Accounts and other returns**

Insurers should prepare accounts in such form and manner as prescribed by the Board and copies of them should be submitted to the Board. The Board could call for further details. The Board could issue a list of approved Auditors to all insurance companies and require them to select Auditors from this list. The Auditor should report to the Board whether the accounting records have been maintained in a manner which reflects the true financial position of the insurer. The Board on its receipt could give directives to the Auditor if the Board requires any further investigation.

Every insurer shall appoint a qualified Actuary with the concurrence of the Board. Life valuation by the Actuaries should be carried out annually. The actuary should certify that the reserves of the insurer are adequate and recommend the quantum of bonus payable to policy holders. An abstract of the Actuary's report should be forwarded to the Board which could call for additional information and documents relating to the actuarial valuation.

15. Inspections and Investigations.

The Board could carry out inspections and investigations into the affairs of insurers, agents and brokers and call for books, accounts and records and give directives if it considers that the business concerned is not conducted according to sound insurance principles.

16. Financial viability of the Insurers

The most important function of the Insurance Board would be to monitor the financial viability of insurance companies to ensure that they would be able to meet the legitimate claims of policy holders. Accordingly the following are suggested.

(a) Share Capital.
Presently the required minimum issued share capital is stipulated in the Act itself as Rs. 25 Million for Life Insurance and as Rs. 50 Million for General Insurance which are not adequate as these amounts have been prescribed in 1986. It is suggested that the minimum paid up share capital be prescribed by the Board by way of Regulations so that the limits could be revised by amending the Regulations to keep pace with inflationary trends.

(b) Investment of Assets.
The present Act requires insurance companies to invest a minimum of 50% of its Life Funds and 30% of the General Insurance Fund in the form of Government Securities. In order to permit insurance companies to make their investments in a wider area it is suggested that these limits be reduced to make it 30% of the assets of Life Fund and 20% of the assets of the General Insurance Fund should be in the form of Government Securities.

Presently the other investment areas where the remaining funds can be invested are also specified in the Act and it is necessary to give some flexibility for the Board to decide on appropriate areas of investments. Therefore provision is made in the Draft Law for the Board to publish regulations specifying approved investment areas. The Board if it considers that any investment of any part of insurers assets is unsuitable, could direct the insurer to dispose of that investment within a specified period.
(c) Establishment of a Policy Holders Protection Fund. 
Provision is also being made to enable the Board to establish a Policy Holders Protection Fund for the purpose of protecting the interests of Policy Holders in case of default by insurers.

17. **Overseas Insurance.**

No person in Sri Lanka shall without prior approval of the Board directly or indirectly place any insurance business except reinsurance with an insurer not registered in Sri Lanka. There will be no restriction on Sri Lankan residents who travel abroad taking foreign insurance policies in respect of medical and travel insurance. Non Resident Foreign Currency (NRFC) Resident Foreign Currency (RFC) and Resident Non-National Foreign Currency (RNNFC) Account Holders would be permitted to take medical insurance or other forms of insurance approved by the Board from a foreign insurer and pay the premium from their foreign currency accounts.

18. **Reinsurance Premium Payments.**

Prior approval of the Board will not be required for all reinsurance treaties and for the remittance of re-insurance premium payments abroad. However particulars of all reinsurance treaties, contracts and arrangements should be sent by insurers to the Insurance Board which will have the right to review them. If these are not found to be in the insurer's interest or in the public interest, the insurer should make necessary amendments, if the Board so directs, when the treaty or contract comes up for renewal.

19. **Cessions for Domestic Reinsurance.**

The present requirement for all registered insurers to cede 15% of gross annual premia received under contracts and policies of fire and marine insurance as reinsurance to National Insurance Corporation Co. Ltd. has been deleted since it is another insurance company competing for insurance business with them.

**Insnote(2)**