



ANALYSIS

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1994, No. 41

An Act to effect certain reforms in the law governing insurance intermediaries

[1 July 1994

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Insurance Intermediaries Act 1994.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Arrange”, in relation to contracts of insurance, includes negotiating, soliciting, or procuring any such contract:

“Broker”, in relation to an insurer, means a person—

(a) Who carries on the business of arranging contracts of insurance (whether or not the business is the person’s principal business or is carried on in connection with any other business); and

(b) Who is not the employee of the insurer; and

(c) Who is not appointed, under a signed agreement, as the agent for the insurer for the purposes of receiving money due to the insurer from the insured and due to the insured from the insurer:

“Contract of insurance” includes a proposed contract of insurance:

“Insurance broking client account” means an account established and maintained in accordance with section 14 of this Act:

“Insurance intermediary”—

(a) Means a person—

(i) Who for reward arranges contracts of insurance in New Zealand or elsewhere; and

(ii) Who does so as the employee of or agent for one or more insurers or as the agent for the insured; and

(b) Includes a broker:

“Insured” means any person who has entered into, or who proposes to enter into, a contract of insurance with an insurer, and includes any person who is entitled to the whole or part of the benefit of the contract of insurance:

“Insurer”, in relation to a contract of insurance, means the person by whom or on whose behalf the risk, or a part of the risk, to which the contract relates is accepted:

“Person” includes a body of persons whether incorporated or not:

“Premium” includes an instalment of a premium:

“Prescribed” means prescribed by regulations made under section 18 of this Act.

(2) For the purposes of this Act, any person who is appointed, under a signed agreement, as an agent of the insurer shall be deemed, unless the agreement states otherwise, to be appointed, under that agreement, as an agent of the insurer for

the purposes of receiving money due to the insurer from the insured and due to the insured from the insurer.

Cf. Insurance (Agents and Brokers) Act 1984, s. 9
(Australia)

3. Act to bind the Crown—This Act shall bind the Crown.

Payments to Insurance Intermediaries

4. Payment by insured to intermediary to be discharge of insured's liability to insurer—Any money paid by or on behalf of an insured to an insurance intermediary, whether in respect of a premium or otherwise, under or in relation to any contract of insurance that has been arranged or effected, or that is to be arranged or effected, by the insurance intermediary shall be a discharge, as between the insured and the insurer, of the liability of the insured to pay that money to the insurer.

Cf. Insurance (Agents and Brokers) Act 1984, s. 14 (1), (2)
(Australia)

5. Payment by insurer to intermediary not to be discharge of insurer's liability to insured—Any money paid by or on behalf of an insurer to an insurance intermediary, whether in respect of a claim, return of premiums, or otherwise, under or in relation to any contract of insurance shall not discharge the liability of the insurer to pay that money to the insured.

Cf. Insurance (Agents and Brokers) Act 1984, s. 14 (3)
(Australia)

6. Prohibition on contracting-out—(1) An agreement, in so far as it purports to modify, restrict, or exclude the operation of section 4 or section 5 of this Act, shall be void.

(2) Subsection (1) of this section does not render void an agreement between an insurance intermediary and an insured in so far as the agreement allows the insurance intermediary to set off, against money payable to the insured, money payable by the insured to the insurance intermediary in respect of premiums.

Cf. Insurance (Agents and Brokers) Act 1984, s. 14 (4), (5)
(Australia)

7. Contracts governed by foreign law—Sections 4 to 6 of this Act have effect despite the proper law of any contract being the law of a country other than New Zealand.

Duties of Brokers in Relation to Premiums

8. Duties of broker in relation to premiums—(1) Every broker who receives a sum of money by way of premium in connection with a contract of insurance shall, if the risk, or a part of the risk, to which the contract relates is accepted by or on behalf of an insurer, pay to the insurer within the relevant period either—

- (a) An amount equal to so much of the money as does not exceed the amount of the premium to be paid; or
- (b) Where the broker has not been informed of, and has not otherwise ascertained, the amount of the premium to be paid, whichever is the smaller amount of—
 - (i) The sum of money so received; or
 - (ii) 75 percent of the amount fairly estimated by the broker to be the premium that is to be paid or, where the premium is payable in respect of a renewal of a contract of insurance, 75 percent of the previous year's premium for the risk or of the last instalment of the year's premium, as the case may be.

(2) For the purposes of this section, "relevant period" means—

- (a) The period of 50 days after the end of the month in which the cover provided by the insurer under the contract commences to have effect; or
- (b) Where the sum of money is an instalment of a premium, the period of 50 days after the end of the first month to which the instalment relates.

(3) Nothing in this section prevents—

- (a) An insurer from making a contract or arrangement with a broker providing for the variation of the relevant period:
- (b) An insurer from authorising a broker in writing to pay on behalf of the insurer, out of the money received by the broker as a premium in respect of a contract of insurance arranged with the insurer, any charges required by law to be paid by the insurer in respect of the contract:
- (c) A broker from exercising any legal right available to the broker to deduct from any money payable by the broker to the insurer any remuneration payable by the insurer to the broker in relation to a contract of insurance.

(4) Every broker commits an offence who, without reasonable excuse, fails to comply with this section and is liable on summary conviction,—

- (a) In the case of an individual, to a fine not exceeding \$5,000;
- (b) In the case of a body corporate, to a fine not exceeding \$10,000.

Cf. Insurance (Agents and Brokers) Act 1984, s. 27 (1), (2), (4), (6), (12) (Australia)

9. Payment by broker to another insurance intermediary may constitute payment to insurer—Where—

- (a) A broker receives money by way of premium in connection with a contract of insurance from or on behalf of an insured; and
- (b) Another insurance intermediary accepts as agent for an insurer the risk, or a part of the risk, to which the contract relates,—

then, for the purpose of the application of section 8 of this Act to the broker, payment of the premium, or part of the premium, as the case may be, by the broker to the intermediary shall be taken to constitute payment of the premium or part of the premium by the broker to the insurer.

Cf. Insurance (Agents and Brokers) Act 1984, s. 27 (7) (Australia)

10. Duty to notify insurer if premium not paid—

(1) Where the amount of the premium payable in respect of a contract of insurance has not been received by the broker at the expiration of the relevant period within the meaning of section 8 (2) of this Act, the broker shall notify the insurer in writing, within 7 days after the day on which the relevant period expired, that the premium has not been received.

(2) Subsection (1) of this section shall not apply if the amount of the premium is received by the broker before the broker notifies the insurer in accordance with that subsection.

Cf. Insurance (Agents and Brokers) Act 1984, s. 27 (3) (Australia)

11. Notification by broker to another insurance intermediary may constitute notice to insurer—Where—

- (a) A broker is required to notify an insurer in accordance with section 10 of this Act; and

- (b) Another insurance intermediary accepts as agent for the insurer the risk, or a part of the risk, to which the contract relates,—

then, for the purpose of the application of section 10 of this Act to the broker, notification by the broker to the intermediary shall be taken to constitute notification by the broker to the insurer.

Cf. Insurance (Agents and Brokers) Act 1984, s. 27 (8) (Australia)

12. Lloyd's brokers—(1) Where—

- (a) A broker is required by any provision of section 8 or section 10 of this Act to pay an amount to, or to notify, an insurer; and

- (b) Under the contract of insurance concerned, the insurer is an underwriting member of Lloyd's,—

it shall be sufficient compliance with that provision if the broker pays the amount to, or notifies, as the case may be, the Lloyd's broker concerned.

- (2) In this section,—

“Lloyd's” means the society of that name incorporated by the Imperial Act known as the Lloyd's Act 1871:

“Lloyd's underwriter” means an underwriting member of Lloyd's.

Cf. Insurance (Agents and Brokers) Act 1984, s. 27 (13), (14) (Australia); Statute Law (Miscellaneous Provisions) Act (No. 2) 1986, Schedule 1 (Australia); Insurance Act 1973, s. 3 (1) (Australia)

Duties of Brokers in Relation to Payments Due to Insured

13. Duties of broker in relation to payments due to insured—(1) Subject to subsection (2) of this section, where a broker receives money from, or on behalf of, an insurer for payment to, or on behalf of, an insured, the broker shall pay that money to, or on behalf of, the insured within 7 days after the day on which the broker received the money.

(2) Where a broker receives from, or on behalf of, an insurer a cheque that is expressed to be payable to a particular insured, the broker shall send that cheque immediately to, or on behalf of, the insured.

- (3) Nothing in subsection (1) of this section prevents—

- (a) An insured from making a contract or arrangement with a broker providing for the broker to pay an amount to

or on behalf of the insured before being required to do so by that subsection; or

- (b) A broker from exercising any legal right available to the broker to deduct from any money payable by the broker to the insured any money payable by the insured to the broker in connection with a contract of insurance.

(4) Every broker commits an offence who, without reasonable excuse, fails to comply with this section and is liable on summary conviction,—

- (a) In the case of an individual, to a fine not exceeding \$5,000:
 (b) In the case of a body corporate, to a fine not exceeding \$10,000.

Cf. Insurance (Agents and Brokers) Act 1984, s. 27 (10), (11), (12) (Australia)

Insurance Broking Client Accounts

14. Broker to operate insurance broking client account—(1) Every broker shall establish and maintain one or more insurance broking client accounts with a financial institution in New Zealand.

(2) A broker may establish and maintain one or more insurance broking client accounts outside New Zealand with one or more overseas financial institutions.

(3) Every insurance broking client account shall be a cheque account.

(4) Every broker shall ensure that the following money is paid, immediately after it is received, into an insurance broking client account:

- (a) All money received from or on behalf of an insured for or on account of an insurer in connection with a contract of insurance arranged or to be arranged by the broker:
 (b) All money received from or on behalf of an insurer for or on account of an insured (except any cheque which is expressed to be payable to a particular insured and which is immediately sent to, or on behalf of, the insured):
 (c) Any money by way of realisation of investments that is to be paid into the account in accordance with section 15 of this Act:
 (d) Any other money that is required by regulations made under that section to be paid into the account.

(5) Every broker shall ensure that no money is paid out of the broker's insurance broking client account except—

- (a) For making a payment required or authorised by this Act;
or
- (b) For making an investment in accordance with this Act; or
- (c) For withdrawing money paid into the account in error; or
- (d) Otherwise in accordance with regulations made under this Act.

(6) Every broker commits an offence who, without reasonable excuse, fails to comply with this section and is liable on summary conviction,—

- (a) In the case of an individual, to a fine not exceeding \$10,000;
- (b) In the case of a body corporate, to a fine not exceeding \$20,000.

Cf. Insurance (Agents and Brokers) Act 1984, s. 26 (1) (Australia)

15. Investment of broking money—(1) Subject to subsection (2) of this section, money in an insurance broking client account may be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds, except that no money may be invested in equity securities within the meaning of that term in section 2 of the Securities Act 1978.

(2) No money paid by or on behalf of an insured by way of premium in connection with a contract of insurance that is to be arranged or effected shall be invested until the risk to which the contract relates is accepted by or on behalf of the insurer.

(3) Every broker shall pay money received from the realisation of any investment into an insurance broking client account.

(4) If, upon the realisation of any investment, the amount received in respect of the realisation is less than the amount invested, the broker shall pay into the account from which the money was withdrawn for investment an amount equal to the difference between the amount invested and the amount received.

(5) If, upon the realisation of any investment, the amount received in respect of the realisation is more than the amount invested, the broker may retain for his or her own benefit the amount by which the amount received exceeds the amount invested and need not pay it into, or retain it in, an insurance broking client account.

(6) Interest or other income received by a broker from an insurance broking client account may be retained by the broker for his or her own benefit and need not be paid into an insurance broking client account.

(7) Every broker commits an offence who, without reasonable excuse, fails to comply with this section and is liable on summary conviction,—

(a) In the case of an individual, to a fine not exceeding \$10,000;

(b) In the case of a body corporate, to a fine not exceeding \$20,000.

Cf. Insurance (Agents and Brokers) Act 1984, s. 26 (4)–(8) (Australia)

16. Broking money not capable of being attached, etc.—No money that is payable, or that has been paid, into an insurance broking client account in accordance with section 14 or section 15 of this Act, and no property in which any such money has been invested, shall be liable to be attached or taken in execution or made subject to a set-off, charge, or charging order or to any process of a like nature, except at the suit of a person entitled to that money under this Act.

Cf. Insurance (Agents and Brokers) Act 1984, s. 26 (9), (10) (Australia)

*Distribution of Insurance Broking Client Account
Money on Insolvency*

17. Distribution of insurance broking client account money on insolvency—(1) This section applies to and in relation to a broker—

- (a) Who has been adjudged bankrupt; or
- (b) That is a company to which section 199N (1) of the Companies Act 1955 or section 385 (1) of the Companies Act 1993 applies; or
- (c) Who is deceased and whose estate is being administered under Part XVII of the Insolvency Act 1967; or
- (d) That is a corporation or an associated person or a subsidiary of a corporation to which an Order in Council made under section 38 of the Corporations (Investigation and Management) Act 1989 applies; or
- (e) That is a registered bank or an associated person of a registered bank or a subsidiary of a registered bank to which an Order in Council made under section 117 of the Reserve Bank of New Zealand Act 1989 applies.

(2) This section applies notwithstanding anything to the contrary contained in the Insolvency Act 1967 or the Companies Act 1955 or the Companies Act 1993.

(3) Money in an insurance broking client account of a broker, and property in which money has been invested, shall be treated as though it was subject to a trust in favour of the persons entitled to the money or property, as the case may be.

(4) Money from such an account shall be paid as follows:

(a) First, money that has been paid into the account in error shall be withdrawn from the account:

(b) Secondly, insureds shall be paid the amounts they are entitled to receive from the money in the account in respect of claims made pursuant to contracts of insurance:

(c) Thirdly, insureds shall be paid the amounts (other than amounts to which paragraph (b) of this subsection applies) that they are entitled to receive from the money in the account:

(d) Fourthly, after all payments have been made under paragraphs (b) and (c) of this subsection, insurers shall be paid the amounts they are entitled to receive from the money in the account.

(5) If the money in the account that is available to make payments required under a particular paragraph (other than paragraph (a)) of subsection (4) of this section are not sufficient to meet those payments in full, the payments required under the paragraph concerned shall be made proportionally.

(6) All money remaining after all payments have been made under subsection (4) of this section shall be taken to be money payable to the broker.

(7) Nothing in the preceding provisions of this section prevents money in the account being invested in accordance with this Act by a person, other than the broker, who has lawful custody or control of the money.

Cf. Insurance (Agents and Brokers) Act 1984, s. 28 (Australia)

Miscellaneous Provisions

18. Regulations—The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) Specifying the duties and obligations of brokers in relation to insurance broking client accounts, including obligations to make payments into those accounts:

- (b) Providing for the protection of money deposited in insurance broking client accounts or invested from claims by persons other than the person for whom, or on whose behalf, the money is held:
- (c) Restricting the combining of any insurance broking client account with any other account or the combining of any property in which money from such an account is invested with any other property:
- (d) Providing for the audit and inspection of the books, accounts, and records kept by brokers:
- (e) Exempting any broker, or class of broker, from any requirements relating to any such audit or inspection:
- (f) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this section, and the amounts of the fines that may be imposed in respect of any such offences:
- (g) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

19. Act not to apply to contracts of reinsurance—This Act shall not apply to or in relation to contracts or proposed contracts of reinsurance.

20. Application of section 10 of Insurance Law Reform Act 1977—Nothing in section 10 of the Insurance Law Reform Act 1977 (which deems a representative of an insurer to be the agent of the insurer in certain circumstances) shall limit any provisions of this Act and the provisions of this Act shall prevail in any case where they are in conflict with the provisions of that section.

This Act is administered in the Department of Justice.
