

รายการอ้างอิง



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จุฬาลงกรณ์มหาวิทยาลัย



ภาคผนวก

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

INSURANCE BROKERS (REGISTRATION) ACT 1977
(1977 c 46)

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An Act to provide for the registration of insurance brokers and for the regulation of their professional standards; and for purposes connected therewith [29 July 1977]

Northern Ireland. This Act applies; see s 30(2) post.

The Insurance Brokers Registration Council

1 Establishment of Insurance Brokers Registration Council

(1) There shall be established a body to be called the Insurance Brokers Registration Council (hereinafter referred to as "the Council") which shall be a body corporate with perpetual succession and a common seal and shall have the general function of carrying out the powers and duties conferred on them by this Act.

(2) The Council shall be constituted in accordance with the Schedule to this Act and the supplementary provisions contained in that Schedule shall have effect with respect to the Council.

NOTES

Body corporate. For the general law relating to corporations, see 9 Halsbury's Laws (4th edn) paras 1201 et seq.

Common seal. A corporation aggregate generally requires a seal for the purpose of executing deeds. Note however, that the Corporate Bodies' Contracts Act 1960, s 1, Vol 11, title Contract, abolished the common law rule that contracts entered into by a corporation were unenforceable unless executed under seal.

*Registration and training of insurance brokers***2 The insurance brokers register**

The Council shall establish and maintain a register of insurance brokers (hereinafter referred to as "the register") containing the names, addresses and qualifications, and such other particulars as may be prescribed, of all persons who are entitled under the provisions of this Act to be registered therein and apply in the prescribed manner to be so registered.

NOTES

Such other particulars as may be prescribed; prescribed manner. "Prescribed" means prescribed by rules under this Act (see s 29(1) post) and for the powers to make and approve rules, see ss 8(2), 27(1) post.

Persons. By virtue of the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes, unless the contrary intention appears, this word includes a body of persons corporate or unincorporate. The word as used in this section and s 3 post appears to mean only a natural person. Bodies corporate carrying on business as insurance brokers are governed by the provisions of s 4 post.

Entitled . . . to be registered. For the qualifications for registration, see s 3 post.

Further provisions. See, in particular, s 5 post (appeal against refusal to register, etc); s 8 post (supplementary provisions as to register); s 9 post (publication of register); s 15 post (erasure from register for crime, unprofessional conduct, etc); s 16 post (restoration of names erased from register); s 17 post (erasure from register on grounds of fraud or error); s 18 post (appeals against erasure from register); and s 22(1), (3) post (penalty for pretending to be registered).

Definitions. For "the Council", see s 1(1) ante; for "insurance broker" and "prescribed", see s 29(1) post.

3 Qualifications for registration

(1) Subject to subsection (2) below and to section 16 of this Act, a person shall be entitled to be registered if he satisfies the Council—

- (a) that he holds a qualification approved by the Council under section 6 of this Act, being a qualification granted to him after receiving instruction from an institution so approved; or
- (b) that he holds a qualification recognised by the Council for the purposes of this paragraph, being a qualification granted outside the United Kingdom; or
- (c) that he has carried on business as an insurance broker, or as a whole-time agent acting for two or more insurance companies in relation to insurance business, for a period of not less than five years; or
- (d) that he holds a qualification recognised by the Council for the purposes of this paragraph and has carried on business as mentioned in paragraph (c) above for a period of not less than three years; or
- (e) that he has been employed by a person carrying on business as mentioned in paragraph (c) above, or by an insurance company, for a period of not less than five years; or
- (f) that he holds a qualification recognised by the Council for the purposes of this paragraph and has been employed by a person carrying on business as mentioned in paragraph (c) above, or by an insurance company, for a period of not less than three years; or
- (g) that he has knowledge and practical experience of insurance business which is comparable to that of a person who has carried on business as an insurance broker for a period of five years; or
- (h) that he holds a qualification recognised by the Council for the purposes of this paragraph and has knowledge and practical experience of insurance business which is comparable to that of a person who has carried on business as an insurance broker for a period of three years.

(2) A person shall not be entitled to be registered in the register by virtue of subsection (1) above unless he also satisfies the Council—

- (a) as to his character and suitability to be a registered insurance broker; and
- (b) in a case falling within paragraph (a), (b), (e) or (f) of subsection (1) above, that he has had adequate practical experience in the work of an insurance broker; and
- (c) if he is carrying on business as an insurance broker at the time when the application is made, that he is complying with the requirements of rules under section 11(1) of this Act.

(3) Subject to section 16 of this Act, a person shall be entitled to be registered in the register if he satisfies the Council that he or a partnership of which he is a member is accepted as a Lloyd's broker by the Committee of Lloyd's.

(4) The Secretary of State may, after consulting the Council, by order provide that any of the paragraphs in subsection (1) or (2) above shall be omitted or shall have effect subject to such amendments as may be specified in the order.

NOTES

Persons. See the note to s 2 ante.

United Kingdom. In Great Britain and Northern Ireland; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. "Great Britain" means England, Scotland and Wales by virtue of the Union with Scotland Act 1706, preamble, Art 1, Vol 10, title Constitutional Law (Pt 1), as read with s 22(1) of, and Sch 2, para 5(a) to, the 1978 Act. Neither the Channel Islands nor the Isle of Man is within the United Kingdom.

Carry on business. The words "carry on business" denote something of a permanent character, not merely an isolated transaction and a business is carried on only where there is some degree of management or control; see *Brown v London and North Western Ry Co* (1863) 32 LJQB 318, [1861-73] All ER Rep 487; *Graham v Lewis* (1888) 22 QBD 1, CA; and *Cain v Butler* [1916] 1 KB 759 at 762; but contrast *Cornelius v Phillips* [1918] AC 199, [1916-17] All ER Rep 685, HL. See also *Kirkwood v Gadd* [1910] AC 422 at 423, [1908-10] All ER Rep 768 at 771, HL; *Newman v Oughton* [1911] 1 KB 792; *Transport and General Credit Corp Ltd v Morgan* [1939] Ch 531, [1939] 2 All ER 17; *Re Brauch (a debtor), ex p Britannic Securities and Investments Ltd* [1978] Ch 316, [1978] 1 All ER 1004, CA; and *Re Sarflax Ltd* [1979] Ch 592, [1979] 1 All ER 529. On the meaning of "business", see 1 Words and Phrases (2nd edn) 199 et seq.

Wherever the phrase "carried on [or "carrying on" or "has carried on"] business as an insurance broker" appears in this section, it refers to the carrying on of that business to an extent which provided the applicant or registration with adequate practical experience of the business of an insurance broker; see *Pickles v Insurance Brokers Registration Council* [1984] 1 All ER 1073, [1984] 1 WLR 748.

Secretary of State. In one of Her Majesty's Principal Secretaries of State; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. The Secretary of State here concerned in the Secretary of State for Trade and Industry.

Consulting. On what constitutes consultation, see, in particular, *Fletcher v Minister of Town and Country Planning* [1947] 2 All ER 496, (1947) 111 JP Jo 542; *Rollo v Minister of Town and Country Planning* [1948] All ER 13, [1948] LJR 817, CA; *Re Union of Whippingham and East Cowes Benefices, Derham v Church Comrs for England* [1954] AC 245, [1954] 2 All ER 22, PC; and *Agricultural, Horticultural and Forestry Industry Training Board v Aylesbury Mushrooms Ltd* [1972] 1 All ER 280, [1972] 1 WLR 190.

Definitions. For "the Council", see s 1(1) ante; for "insurance business", "insurance broker", "insurance company", "register" and "registered insurance broker", see s 29(1) post.

Orders under this section. No orders had been made under this section up to 1 March 1986.

For general provisions as to orders, see s 28(1), (3) post.

List of bodies corporate carrying on business as insurance brokers

(1) The Council shall establish and maintain a list of bodies corporate carrying on business as insurance brokers (hereinafter referred to as "the list") containing the names, principal places of business and such other particulars as may be prescribed of all bodies corporate which are entitled under this section to be enrolled therein and apply in the prescribed manner to be so enrolled.

(2) Subject to subsection (3) below and to section 16 of this Act, a body corporate shall be entitled to be enrolled in the list if it satisfies the Council—

- (a) that a majority of its directors are registered insurance brokers; or

- (b) in the case of a body corporate having only one director, that he is a registered insurance broker; or
- (c) in the case of a body corporate having only two directors, that one of them is a registered insurance broker and that the business is carried on under the management of that director.
- (3) A body corporate shall not be entitled to be enrolled in the list by virtue of subsection (1) above unless it also satisfies the Council that it is complying with the requirements of rules under section 11(1) of this Act.
- (4) Subject to section 16 of this Act, a body corporate shall be entitled to be enrolled in the list if it satisfies the Council that it is accepted as a Lloyd's broker by the Committee of Lloyd's.

NOTES

Bodies corporate. See the note "Body corporate" to s 1 ante.

Such other particulars as may be prescribed; prescribed manner. "Prescribed" means prescribed by rules under this Act; see s 29(1) post, and for the powers to make and approve rules, see ss 8(2), 27(1) post. For the relevant rules, see the Insurance Brokers Registration Council (Registration and Enrolment) Rules Approval Order 1978, SI 1978/1395 (made under ss 27(1), 28(1) post), as amended by SI 1979/490, SI 1982/1406.

Further provisions. See, in particular, s 5 post (appeal against refusal to enrol, etc); s 8 post (supplementary provisions as to list); s 9 post (publication of list); s 15 post (erasure from list for crime, unprofessional conduct, etc); s 16 post (restoration of names erased from list); s 17 post (erasure from list on grounds of fraud or error); s 18 post (appeals against erasure from list); and s 22(2), (3) post (penalty for pretending to be enrolled).

Definitions. For "the Council", see s 1(1) ante; for "insurance broker", "prescribed" and "registered insurance broker", see s 29(1) post. Note as to "the list", sub-s (1) above.

5 Appeals against refusal to register or enrol

(1) Before refusing an application for registration under section 3 of this Act or an application for enrolment under section 4 of this Act, the Council shall give the person by whom or the body corporate by which the application was made an opportunity of appearing before and being heard by a committee of the Council.

(2) Where the Council refuse any such application, the Council shall, if so required by the person by whom or the body corporate by which the application was made within seven days from notification of the decision, serve on that person or body a statement of the reasons therefor.

(3) A person or body corporate whose application is so refused may within twenty-eight days from—

- (a) notification of the decision, or
- (b) if a statement of reasons has been required under subsection (2) above, service of the statement,

appeal against the refusal to the Court.

(4) The Council may appear as respondent on any such appeal and for the purpose of enabling directions to be given as to the costs of any such appeal the Council shall be deemed to be a party thereto, whether they appear on the hearing of the appeal or not.

(5) On the hearing of any such appeal the Court may make such order as it thinks fit and its order shall be final.

NOTES

Application for registration under s 3. Applications for registration are in fact to be made under s 2 ante (though the qualifications for registration are set out in s 3 ante).

Heard by a committee of the Council. It would appear that any such hearing must comply with the rules of natural justice. See further 1 Halsbury's Laws (4th edn) paras 64 et seq.

For the general power to appoint committees, see s 21 post.

Within seven (twenty-eight) days from. See the note "Within one month of, etc" to s 6 post.

Serve . . . a statement. As to the service of documents, see s 26 post.

Definitions. For "the Council", see s 1(1) ante; for "the Court", see s 29(1) post.

6 Approval of educational institutions and qualifications

(1) The Council may approve for the purposes of this Act any institution (hereinafter referred to as "an approved educational institution") where the instruction given to persons being educated as insurance brokers appears to the Council to be such as to secure to them adequate knowledge and skill for the practice of their profession.

(2) The Council may approve for the purposes of this Act any qualification (hereinafter referred to as "an approved qualification") which appears to the Council to be granted to candidates who reach such a standard of proficiency at a qualifying examination as to secure to them adequate knowledge and skill for the practice of their profession.

(3) Where the Council have refused to approve an institution or qualification under this section as suitable for any purpose, the Secretary of State, on representations being made to him within one month of the refusal, may, if he thinks fit, after considering the representations and after consulting the Council, order the Council to approve the institution or qualification as suitable for that purpose.

(4) The Council shall publish before the day appointed for the coming into operation of section 3 (1) (a) of this Act, and from time to time thereafter, a list of approved educational institutions and approved qualifications.

NOTES

Approve for the purposes of this Act. See, in particular, s 3(1)(a) ante.

Secretary of State; consulting. See the notes to s 3 ante.

Within one month of, etc. The general rule in cases where an act is to be done within a specified time is that the day from which it runs is not to be counted; see *Goldsmiths' Co v West Metropolitan Rly Co* [1904] 1 KB 1, [1900-3] All ER Rep 667, CA; *Stewart v Chapman* [1951] 2 KB 792, [1951] 2 All ER 613. See also *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL, as to the day of expiry of periods of a month or a specified number of months.

Day appointed for the coming into operation of s 3(1)(a). S 3 came into force on 20 October 1978 by virtue of the Insurance Brokers (Registration) Act 1977 (Commencement No 2) Order 1978, SI 1978/1393, made under s 30 post.

Definitions. For "the Council", see s 1(1) ante; for "insurance broker", see s 29(1) post. Note as to "approved educational institution" and "approved qualification", sub-ss (1) and (2) above respectively.

7 Supervision of educational institutions and qualifying examinations

(1) It shall be the duty of the Council to keep themselves informed of the nature of the instruction given by any approved educational institution to persons being educated as insurance brokers and of the examinations on the results of which approved qualifications are granted.

(2) For the purposes of their duty under subsection (1) above the Council may appoint persons to visit approved educational institutions and to attend at the examinations held by the bodies which grant approved qualifications.

(3) It shall be the duty of visitors appointed under subsection (2) above to report to the Council as to the sufficiency of the instruction given by the institutions visited by them, or of the examinations attended by them, and as to any other matters relating thereto which may be specified by the Council either generally or in any particular case, but no visitor shall interfere with the giving of any instruction or the holding of any examination.

(4) Where it appears to the Council (as a result of a report under subsection (3) above or otherwise),—

- (a) that the instruction given by any approved educational institution to persons being educated as insurance brokers or the examinations taken by such persons are not such as to secure the possession by them of adequate knowledge and skill for the practice of their profession; and
- (b) that by reason thereof the approval of the institution or qualification in question should be withdrawn,

the Council shall give notice in writing to the institution or body of their opinion, sending therewith a copy of any report on which their opinion is based.

(5) On the receipt of the notice the institution or body may, within such period (not being less than one month) as the Council may have specified in the notice, make to the Council observations on the notice and any report sent therewith or objections to the notice and report.

(6) As soon as may be after the expiration of the period specified in the notice under subsection (4) above the Council shall determine whether or not to withdraw their approval of the institution or qualification, as the case may be, taking into account any observations or objections duly made under subsection (5) above.

(7) The Council shall give notice in writing of any decision under this section to withdraw approval of an institution or qualification to the institution or body concerned and the decision shall not take effect until the expiration of one month from the date of the giving of the notice or, if during that time the institution or body makes representations with respect to the decision to the Secretary of State, until the representations are finally dealt with.

(8) Where the Council have decided to withdraw approval of an institution or qualification, the Secretary of State, on representations being made to him within one month from the giving of notice of the decision, may, if he thinks fit, after considering the representations and after consulting the Council order the Council to annul the withdrawal of approval.

(9) The Council may pay to visitors appointed under this section such fees and such travelling and subsistence allowances as the Council may determine.

NOTES

Sub-s (1): It shall be the duty, etc. As to the remedies for failure to perform a statutory duty, see generally the Preliminary Note to the title Statutes, Vol 41, 1 Halsbury's Laws (4th edn) paras 99, 195, 205, and 44 Halsbury's Laws (4th edn) paras 941 et seq.

Sub-s (4): Give notice. As to the service of notices, see s 26 post.

Writing. Unless the contrary intention appears this includes other modes of representing or reproducing words in a visible form: see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

Sub-s (5): Within such period, etc. Cf the note "Within one month of, etc" to s 6 ante.

Month. This means a calendar month; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

Sub-s (7): One month from. See the note "Within one month of, etc" to s 6 ante.

Secretary of State. See the note to s 3 ante.

Sub-s (8): Within one month from. See the note "Within one month of, etc" to s 6 ante.

Consulting. See the note to s 3 ante.

Definitions. For "the Council", see s 1(1) ante; for "approved educational institution", see s 6(1) ante; for "approved qualification", see s 6(2) ante; for "insurance broker", see s 29(1) post.

8 Supplementary provisions as to the register and list

(1) The register and list shall be kept by the registrar of the Council who shall be appointed by the Council.

(2) The Council may make rules with respect to the form and keeping of the register and list and the making of entries and alterations therein and, in particular—

- (a) regulating the making of applications for registration or enrolment and providing for the evidence to be produced in support of any such applications;
- (b) providing for the notification to the registrar of any change in the particulars required to be entered in the register or list;
- (c) prescribing a fee to be charged on the entry of a name in, or the restoration of a name to, the register or list;
- (d) prescribing a fee to be charged in respect of the retention in the register or list of any name in any year subsequent to the year in which that name was first entered in the register or list;
- (e) providing for the entry in the register of qualifications (whether approved qualifications or not) possessed by persons whose names are registered therein and for the removal of such qualifications from the register, and prescribing a fee to be charged in respect of the entry;
- (f) authorising the registrar to refuse to enter a name in, or restore it to, the register or list until a fee prescribed for the entry or restoration has been paid and to erase from the register or list the name of a person who or body corporate which, after the prescribed notices and warnings, fails to pay the fee prescribed in respect of the retention of that name in the register or list;
- (g) authorising the registrar to erase from the register or list the name of a person who or body corporate which, after the prescribed notices and warnings, fails to supply information required by the registrar with a view to ensuring that the particulars entered in the register or list are correct;
- (h) prescribing anything required or authorised to be prescribed by the provisions of this Act relating to the register or list.

(3) Rules under this section which provide for the erasure of a name from the register or list on failure to pay a fee shall provide for its restoration thereto on the making of the prescribed application in that behalf and on payment of that fee and any additional fee prescribed in respect of the restoration.

(4) Rules under this section prescribing fees may provide for the charging of different fees in different classes of cases and for the making of arrangements for the collection of fees with such body or bodies as may be prescribed.

NOTES

Definitions. For "the Council", see s 1(1) ante; for "approved qualification", see s 6(2) ante; for "enrolment", "list", "prescribed", "register", "registered" and "registration", see s 29(1) post.

Rules under this section. The power to make rules is not exercisable by statutory instrument but any rules made do not come into operation until approved by order of the Secretary of State; see s 27(1) post. See also ss 27(3) and 28 post. For rules under this section, see the Schedule to the Insurance Brokers Registration Council (Registration and Enrolment) Rules Approval Order 1978, SI 1978/1395 (made under ss 27(1), 28(1) post), as amended by SI 1979/490 and SI 1982/1406.

9 Publication of register and list

(1) The Council shall cause the register and list to be printed and published within one year of the establishment of the Council and as often thereafter as they think fit.

(2) Where the register or list is not published in any year after the first publication thereof, the Council shall cause any alterations in the entries in the register or list which have been made since the last publication thereof to be printed and published within that year.

(3) A copy of the register or list purporting to be printed and published by the Council, shall, as altered by any alterations purporting to be printed and published by the Council, be evidence in all proceedings that the individuals specified in the register are registered therein or, as the case may be, that the bodies corporate specified in the list are enrolled therein; and the absence of the name of any individual or body corporate

from any such copy of the register or list shall be evidence, until the contrary is shown, that he is not registered or, as the case may be, that it is not enrolled therein.

(4) In the case of an individual whose name or a body corporate the name of which does not appear in any such copy of the register or list as altered as aforesaid, a certified copy, under the hand of the registrar, of the entry relating to that individual or body corporate in the register or list shall be evidence of the entry.

NOTES

Within one year of, etc. See the note "Within one month of, etc" to s 6 ante.

Certified copy . . . shall be evidence. As to the admissibility in evidence of certified copies of documents permitted by statute, see further the Evidence Act 1845, s 1, Vol 17, title Evidence.

Definitions. For "the Council", see s 1(1) ante; for "enrolled", "list", "register", "registered" and "the registrar", see s 29(1) post.

Regulation of conduct

10 Code of conduct

(1) The Council shall draw up and may from time to time revise a statement of the acts and omissions which, if done or made by registered insurance brokers or enrolled bodies corporate, or by registered insurance brokers or enrolled bodies corporate in particular circumstances, constitute in the opinion of the Council unprofessional conduct.

(2) The statement shall serve as a guide to registered insurance brokers and enrolled bodies corporate and persons concerned with the conduct of registered insurance brokers and enrolled bodies corporate, but the mention or lack of mention in it of a particular act or omission shall not be taken as conclusive of any question of professional conduct.

NOTES

Definitions. For "the Council", see s 1(1) ante; for "enrolled" and "registered insurance broker", see s 29(1) post.

Statement under this section. The power to draw up and revise a statement is not exercisable by statutory instrument but any statement or revision does not come into operation until approved by order of the Secretary of State; see s 27(1) post. See also ss 27(3) and 28 post. For a statement under this section, see the Insurance Brokers Registration Council (Code of Conduct) Approval Order 1978, SI 1978/1394 (made under ss 27(1), 28(1) post).

11 Requirements for carrying on business

(1) The Council shall make rules requiring registered insurance brokers who are carrying on business as insurance brokers (hereinafter referred to as "practising insurance brokers") and enrolled bodies corporate to ensure—

- (a) that their businesses have working capital of not less than such amount as may be prescribed;
- (b) that the value of the assets of their businesses exceeds the amount of the liabilities of their businesses by not less than such amount as may be prescribed; and
- (c) that the number of insurance companies with which they place insurance business, and the amount of insurance business which they place with each insurance company, is such as to prevent their businesses from becoming unduly dependent on any particular insurance company.

(2) The Council shall also make rules requiring practising insurance brokers and enrolled bodies corporate—

- (a) to open and keep accounts at banks for money received by them from persons with whom they do business;

- (b) to hold money so received in such manner as may be prescribed;
 - (c) to keep such accounting records showing and explaining the transactions of their businesses as may be prescribed; and
 - (d) to prepare and submit to the Council at such intervals as may be prescribed balance sheets and profit and loss accounts containing such information as may be prescribed for the purpose of giving a true and fair view of the state of their businesses.
- (3) Without prejudice to the generality of subsections (1) and (2) above, rules under this section may empower the Council—
- (a) to require practising insurance brokers and enrolled bodies corporate to deliver at such intervals as may be prescribed reports given by qualified accountants and containing such information as may be prescribed for the purpose of ascertaining whether or not the rules have been complied with;
 - (b) to require practising insurance brokers and enrolled bodies corporate to deliver at such intervals as may be prescribed statements made by them and containing such information as may be prescribed for the purpose of ascertaining whether or not the rules are being complied with; and
 - (c) to take such other steps as they consider necessary or expedient for the purpose of ascertaining whether or not the rules are being complied with.
- (4) Subject to subsections (5) and (6) below, an accountant is qualified to give reports for the purposes of the rules if he is a member of a recognised body of accountants or is for the time being authorised by the Secretary of State under [section 389(1)(b) of the Companies Act 1985] or, in Northern Ireland, by the Department of Commerce for Northern Ireland under section 155(1)(b) of the Companies Act (Northern Ireland) 1960.
- (5) An accountant shall not be qualified to give such reports—
- (a) in relation to a practising insurance broker, if he is an employee or partner of, or an employee of a partner of, the practising insurance broker;
 - (b) in relation to an enrolled body corporate, if he is not qualified for appointment as auditor of the enrolled body corporate.
- (6) A Scottish firm of accountants shall be qualified to give such reports if, but only if, all the partners are so qualified.
- (7) Rules under this section may make different provision for different circumstances, and may specify circumstances in which persons are exempt from any of the requirements of the rules.

NOTES

The words in square brackets in sub-s (4) were substituted by the Companies Consolidation (Consequential Provisions) Act 1985, s 30, Sch 2.

Sub-s (3): Deliver . . . reports; deliver . . . statements. As to the service of documents, see s 26 post.

Sub-s (4): Secretary of State. See the note to s 3 ante.

Sub-s (5): Not qualified for appointment as auditor. For disqualifications for appointment as an auditor to a company, see the Companies Act 1985, s 389, Vol 8, title Companies.

Erasure from register or list. As to erasure from the register or list for contravention or failure to comply with rules under this section, see s 15(2) post.

Companies Act 1985, s 389(1)(b). See Vol 8, title Companies.

Companies Act (Northern Ireland) 1960. 1960 c 22 (NI); not printed in this work. S 155 of that Act was repealed by the Companies (Northern Ireland) Order 1978, SI 1978/1042 (NI 12) arts 26, 153(2), (4), Sch 7.

Rules under this section. The power to make rules is not exercisable by statutory instrument but any rules made do not come into operation until approved by order of the Secretary of State; see s 27(1) post. See also ss 27(3) and 28 post. For rules made under this section, see the Schedule to the Insurance Brokers Registration Council (Accounts and Business Requirements) Rules Approval Order 1979, SI 1979/489 (made under ss 27(1), 28(1) post), as amended by SI 1981/1630.

12 Professional indemnity, etc

(1) The Council shall make rules for indemnifying—

- (a) practising insurance brokers and former practising insurance brokers, and
- (b) enrolled bodies corporate and former enrolled bodies corporate,

against losses arising from claims in respect of any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their businesses.

(2) The Council shall also make rules for the making of grants or other payments for the purpose of relieving or mitigating losses suffered by persons in consequence of—

- (a) negligence or fraud or other dishonesty on the part of practising insurance brokers or enrolled bodies corporate, or of employees of theirs, in connection with their businesses; or
- (b) failure on the part of practising insurance brokers or enrolled bodies corporate to account for money received by them in connection with their businesses.

(3) For the purpose of providing such indemnity and of enabling such grants or other payments to be made, rules under this section—

- (a) may authorise or require the Council to establish and maintain a fund or funds;
- (b) may authorise or require the Council to take out and maintain insurance with authorised insurers;
- (c) may require practising insurance brokers or enrolled bodies corporate or any specified description of practising insurance brokers or enrolled bodies corporate to take out and maintain insurance with authorised insurers.

(4) Without prejudice to the generality of the preceding subsections, rules under this section—

- (a) may specify the terms and conditions on which indemnity or a grant or other payment is to be available, and any circumstances in which the right to it is to be excluded or modified;
- (b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (3) (a) above and require practising insurance brokers or enrolled bodies corporate or any description of practising insurance brokers or enrolled bodies corporate to make payments to any such fund;
- (c) may require practising insurance brokers or enrolled bodies corporate or any description of practising insurance brokers or enrolled bodies corporate to make payments by way of premium on any insurance policy maintained by the Council by virtue of subsection (3) (b) above;
- (d) may prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (3) (c) above;
- (e) may authorise the Council to determine the amount of any payments required by the rules, subject to such limits, or in accordance with such provisions, as may be prescribed;
- (f) may specify circumstances in which, where a registered insurance broker or an enrolled body corporate for whom indemnity is provided has failed to comply with the rules, the Council or insurers may take proceedings against him or it in respect of sums paid by way of indemnity in connection with a matter in relation to which there has been a failure to comply with the rules;
- (g) may specify circumstances in which, where a grant or other payment is made in consequence of the act or omission of a practising insurance broker or enrolled body corporate, the Council or insurers may take proceedings against him or it in respect of the sum so paid;

- (h) may make different provision for different circumstances, and may specify circumstances in which practising insurance brokers or enrolled bodies corporate are exempt from any of the rules;
- (i) may empower the Council to take such steps as they consider necessary or expedient to ascertain whether or not the rules are being complied with; and
- (j) may contain incidental, procedural or supplementary provisions.

NOTES

Sub-s (2): Persons. Unless the contrary intention appears this includes a body of persons corporate or unincorporate; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

Negligence. For the general law on negligence, see 34 Halsbury's Laws (4th edn) paras 1 et seq.

Erasure from register or list. As to erasure from the register or list for contravention of, or failure to comply with, rules under this section, see s 15(2) post.

Definitions. For "the Council", see s 1(1) ante; for "authorised insurers", "employee", "enrolled", "practising insurance broker", "prescribed" and "registered insurance broker", see s 29(1) post.

Rules under this section. The power to make rules is not exercisable by statutory instrument, but any rules made do not come into operation until approved by order of the Secretary of State; see s 27(1) post. See also ss 27(3), 28 post. For rules made under this section, see the Schedule to the Insurance Brokers Registration Council (Indemnity Insurance and Grants Scheme) Rules Approval Order 1979, SI 1979/408 (made under ss 27(1), 28(1) post).

Disciplinary proceedings

13 Preliminary investigation of disciplinary cases

(1) The Council shall set up a committee, to be known as the Investigating Committee, for the preliminary investigation of cases in which—

- (a) it is alleged that a registered insurance broker or enrolled body corporate is liable to have his or its name erased from the register or list on any ground specified in section 15 of this Act; or
- (b) a complaint is made to the Council by or on behalf of a member of the public about a registered insurance broker or an enrolled body corporate or an employee of a registered insurance broker or an enrolled body corporate.

Any such case is hereinafter referred to as "a disciplinary case".

(2) A disciplinary case shall be referred to the Investigating Committee who shall carry out a preliminary investigation of it and, unless they are satisfied that there is insufficient evidence to support a finding that the registered insurance broker or enrolled body corporate is liable to have his or its name erased from the register or list, the Committee shall refer the case, with the results of their investigation, to the Disciplinary Committee set up under the next following section.

(3) The Council shall make rules as to the constitution of the Investigating Committee.

NOTES

Definitions. For "the Council", see s 1(1) ante; for "employee", "enrolled", "list", "register" and "registered insurance broker", see s 29(1) post. Note as to "disciplinary case", sub-s (1) above.

Rules under this section. The power to make rules is not exercisable by statutory instrument but any rules made do not come into operation until approved by order of the Secretary of State; see s 27(1) post. See also s 28(1), (2) post. For rules made under this section, see the Schedule to the Insurance Brokers Registration Council (Constitution of the Investigating Committee) Rules Approval Order 1978, SI 1978/1456 (made under ss 27(1), 28(1) post).

14 The Disciplinary Committee

(1) The Council shall set up a committee, to be known as the Disciplinary Committee, for the consideration and determination of disciplinary cases referred to them under the

last foregoing section and of any other cases of which they have cognizance under the following provisions of this Act.

(2) The Council shall make rules as to the constitution of the Disciplinary Committee, the times and places of the meetings of the Committee, the quorum and the mode of summoning the members thereof.

(3) Rules under this section shall secure that a person, other than the Chairman of the Council, who has acted in relation to any disciplinary case as a member of the Investigating Committee does not act in relation to that case as a member of the Disciplinary Committee.

NOTES

Disciplinary Committee. As to the procedure of the Committee, see s 19 post; and as to assessors to the Committee, see s 20 post.

Other cases of which they have cognizance, etc. See s 15 post (erasure from register or list for crime, unprofessional conduct, etc); s 16 post (restoration of names erased as result of disciplinary cases, etc); and s 17 post (erasure from register or list on grounds of fraud or error).

Investigating Committee. Is the Committee set up by the Insurance Brokers Registration Council under s 13 ante.

Definitions. For "the Council", see s 1(1) ante; for "disciplinary case", see s 13(1) ante.

Rules under this section. The power to make rules is not exercisable by statutory instrument but any rules made do not come into operation until approved by order of the Secretary of State; see s 27(1) post. See also s 28(1), (2) post. For rules made under this section, see the Schedule to the Insurance Brokers Registration Council (Constitution of the Disciplinary Committee) Rules Approval Order 1978, SI 1978/1457 (made under ss 27(1), 28(1) post).

15 Erasure from the register and list for crime, unprofessional conduct, etc

(1) If a registered insurance broker or enrolled body corporate—

- (a) is convicted by any court in the United Kingdom of any criminal offence, not being an offence which, owing to its trivial nature or the circumstances under which it was committed, does not render him or it unfit to have his or its name on the register or list, or
- (b) is judged by the Disciplinary Committee to have been guilty of unprofessional conduct,

the Disciplinary Committee may, if they think fit, direct that the name of the insurance broker or body corporate shall be erased from the register or list.

(2) If it appears to the Disciplinary Committee that a registered insurance broker or an enrolled body corporate has contravened or failed to comply with any rules made under section 11 or section 12 of this Act and that the contravention or failure is such as to render the insurance broker unfit to have his name on the register or the body corporate unfit to have its name on the list, the Disciplinary Committee may, if they think fit, direct that the name of the insurance broker or body corporate shall be erased from the register or list.

(3) Where—

- (a) the name of a director of an enrolled body corporate is erased from the register under subsection (1) above, or
- (b) a director of any such body corporate is convicted of an offence under this Act, or
- (c) the name of a registered insurance broker employed by any such body corporate is erased from the register under subsection (1) above and the act or omission constituting the ground on which it was erased was instigated or connived at by a director of the body corporate, or, if the act or omission was a continuing act or omission, a director of the body corporate had or reasonably ought to have had knowledge of the continuance thereof,

the Disciplinary Committee may, if they think fit, direct that the name of the body corporate shall be erased from the list:

Provided that the Disciplinary Committee shall not take a case into consideration during any period within which proceedings by way of appeal may be brought which may result in this subsection being rendered inapplicable in that case or while any such proceedings are pending.

(4) If the Disciplinary Committee are of opinion as respects an enrolled body corporate that the conditions for enrolment in section 4 of this Act are no longer satisfied, the Disciplinary Committee may, if they think fit, direct that the name of the body corporate shall be erased from the list.

(5) Where a registered insurance broker dies while he is a director of an enrolled body corporate, he shall be deemed for the purposes of subsection (4) above to have continued to be a director of that body until the expiration of a period of six months beginning with the date of his death or until a director is appointed in his place, whichever first occurs.

(6) When the Disciplinary Committee direct that the name of an individual or body corporate shall be erased from the register or list, the registrar shall serve on that individual or body a notification of the direction and a statement of the Committee's reasons therefor.

NOTES

Sub-s (1): United Kingdom. See the note to s 3 ante.

Disciplinary Committee. Is the Committee set up by the Insurance Brokers Registration Council under s 14 ante.

Sub-s (3): Connived. The term "connivance" was frequently used in matrimonial law. For its meaning in that context, see eg *Godfrey v Godfrey* [1965] AC 444, [1964] 3 All ER 154; and *Rumbelow v Rumbelow and Hadden* [1965] P 207, [1965] 2 All ER 767, CA. As to its meaning in the present context, see also *Glanville Williams, Criminal Law: The General Part*, para 222, and *Gregory v Walker* (1912) 77 JP 55, 29 TLR 51.

Knowledge. Knowledge is an essential ingredient of the offence and must be proved by the prosecution; see, in particular, *Gaumont British Distributors Ltd v Henry* [1939] 2 KB 711, [1939] 2 All ER 808.

Knowledge includes the state of mind of a person who shuts his eyes to the obvious; see *James & Son Ltd v Smees* [1955] 1 QB 78 at 91, [1954] 3 All ER 273 at 278 per Parker J. Moreover, there is authority for saying that where a person deliberately refrains from making inquiries the results of which he might not care to have, this constitutes in law actual knowledge of the facts in question; see *Knox v Boyd* 1941 JC 82 at 86 and *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445 at 449, 450 per Devlin J, [1951] WN 383; and see also, in particular, *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847. Yet mere neglect to ascertain what could have been found out by making reasonable inquiries is not tantamount to knowledge; *Taylor's Central Garages (Exeter) Ltd v Roper* supra per Devlin J, and cf *London Computator Ltd v Seymour* [1944] 2 All ER 11; but see also *Mallon v Allon* supra.

As to when the knowledge of an employee or agent may be imputed to his employer or principal, see 11 Halsbury's Laws (4th edn) para 54.

Proceedings by way of appeal. As to the right of appeal against a decision of the Disciplinary Committee, see s 18 post.

Sub-s (6): Shall serve, etc. As to the service of documents, see s 26 post.

Restoration of names erased. See s 16 post.

Definitions. For "the Council", see s 1(1) ante; for "employed", "enrolled", "insurance broker", "list", "register", "registered insurance broker" and "the registrar", see s 29(1) post.

16 Restoration of names erased as result of disciplinary cases, etc

(1) Where the name of an individual or body corporate has been erased from the register or list in pursuance of a direction under the last foregoing section, the name of that individual or body corporate shall not again be entered in the register or list unless the Disciplinary Committee on application made to them in that behalf otherwise direct.

(2) An application under subsection (1) above for the restoration of a name to the register or list shall not be made to the Disciplinary Committee

- (a) within ten months of the date of erasure; or
 (b) within ten months of a previous application thereunder.

NOTES

Disciplinary Committee. Is the Committee set up by the Insurance Brokers Registration Council under s 14 ante.

Within ten months of, etc. See the note "Within one month of, etc" to s 6 ante.

Definitions. For "list" and "register", see s 29(1) post.

17 Erasure from register and list on grounds of fraud or error

(1) If it is proved to the satisfaction of the Disciplinary Committee that any entry in the register or list has been fraudulently or incorrectly made, the Disciplinary Committee may, if they think fit, direct that the entry shall be erased from the register or list.

(2) An individual may be registered or a body corporate enrolled in pursuance of this Act notwithstanding that his or its name has been erased under this section, but if it was so erased on the ground of fraud, that individual or body corporate shall not be registered or enrolled except on an application in that behalf to the Disciplinary Committee; and on any such application the Disciplinary Committee may, if they think fit, direct that the individual or body corporate shall not be registered or enrolled, or shall not be registered or enrolled until the expiration of such period as may be specified in the direction.

(3) Where the Disciplinary Committee direct that the name of an individual or body corporate shall be erased from the register or list under this section, the registrar shall serve on that individual or body a notification of the direction and a statement of the Committee's reasons therefor.

NOTES

Disciplinary Committee. Is the Committee set up by the Insurance Brokers Registration Council under s 14 ante.

Shall serve, etc. As to service of documents, see s 26 post.

Appeals. See s 18 post.

Definitions. For "enrolled", "list", "register" and "registered", see s 29(1) post.

18 Appeals in disciplinary and other cases

(1) At any time within twenty-eight days from the service of a notification that the Disciplinary Committee have under section 15 or section 17 of this Act directed that the name of an individual or a body corporate be erased from the register or list that individual or body corporate may appeal to the Court.

(2) The Council may appear as respondent on any such appeal and for the purpose of enabling directions to be given as to the costs of any such appeal the Council shall be deemed to be a party thereto, whether they appear on the hearing of the appeal or not.

(3) Where no appeal is brought against a direction under section 15 or section 17 of this Act or where such an appeal is brought but withdrawn or struck out for want of prosecution, the direction shall take effect on the expiration of the time for appealing or, as the case may be, on the withdrawal or striking out of the appeal.

(4) Subject as aforesaid, where an appeal is brought against a direction under either of those sections, the direction shall take effect if and when the appeal is dismissed and not otherwise.

NOTES

Within twenty-eight days from, etc. See the note "Within one month of, etc" to s 6 ante.

Disciplinary Committee. Is the Committee set up by the Insurance Brokers Registration Council under s 14 ante.

Definitions. For "the Council", see s 1(1) ante; for "the Court", "list" and "register", see s 29(1) post.

19 Procedure of Disciplinary Committee

(1) For the purpose of any proceedings before the Disciplinary Committee in England or Wales or Northern Ireland the Disciplinary Committee may administer oaths, and any party to the proceedings may sue out writs of subpoena ad testificandum and duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

(2) The provisions of section [36 of the Supreme Court Act 1981] or of the Attendance of Witnesses Act 1854 (which provide a special procedure for the issue of such writs so as to be in force throughout the United Kingdom) shall apply in relation to any proceedings before the Disciplinary Committee in England or Wales or, as the case may be, in Northern Ireland as they apply in relation to causes or matters in the High Court or actions or suits pending in the High Court of Justice in Northern Ireland.

(3) (*Applies to Scotland only.*)

(4) The Council shall make rules as to the procedure to be followed and the rules of evidence to be observed in proceedings before the Disciplinary Committee; and in particular—

- (a) for securing that notice that the proceedings are to be brought shall be given, at such time and in such manner as may be specified in the rules, to the individual or body corporate alleged to be liable to have his or its name erased from the register or list;
- (b) for securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Disciplinary Committee;
- (c) for enabling any party to the proceedings to be represented by counsel or solicitor or (if the rules so provide and the party so elects) by a person of such other description as may be specified in the rules;
- (d) for requiring proceedings before the Disciplinary Committee to be held in public except in so far as may be provided by the rules;
- (e) for requiring, in cases where it is alleged that a registered insurance broker or enrolled body corporate has been guilty of unprofessional conduct, that where the Disciplinary Committee judge that the allegation has not been proved they shall record a finding that the insurance broker or body corporate is not guilty of such conduct in respect of the matters to which the allegation relates;
- (f) for requiring, in cases where it is alleged that a registered insurance broker or enrolled body corporate is liable to have his or its name erased from the register or list under section 15(2) of this Act, that where the Disciplinary Committee judge that the allegation has not been proved they shall record a finding that the insurance broker or body corporate is not guilty of the matters alleged.

(5) Before making rules under this section the Council shall consult such organisations representing the interests of insurance brokers and bodies corporate carrying on business as insurance brokers as appear to the Council requisite to be consulted.

(6) In this section and in section 20 of this Act "proceedings" means proceedings under this Act, whether relating to disciplinary cases or otherwise.

**NOTES**

The words in square brackets in sub-s (2) were substituted by the Supreme Court Act 1981, s 152(1), Sch 5.

Sub-s (1): Disciplinary Committee. Is the Committee set up by the Insurance Brokers Registration Council under s 14 ante.

No person shall be compelled . . . to produce any document. As to the extent of the obligation to produce documents for inspection, see 13 Halsbury's Laws (4th edn) paras 56 et seq.

Sub-s (5): Consult. See the note "Consulting" to s 3 ante.

Definitions. For "the Council", see s 1(1) ante; for "disciplinary case", see s 13 ante; for "enrolled", "insurance broker", "list", "register" and "registered insurance broker", see s 29(1) post. Note as to "proceedings", sub-s (6) above.

Supreme Court Act 1981, s 36. See Vol 11, title Courts.

Attendance of Witnesses Act 1854. See Vol 17, title Evidence.

Rules under this section. The power to make rules is not exercisable by statutory instrument but any rules made do not come into operation until approved by order of the Secretary of State; see s 27(1) post. See also ss 27(2) and 28(1), (2) post. For rules made under this section, see the Schedule to the Insurance Brokers Registration Council (Procedure of the Disciplinary Committee) Rules Approval Order 1978, SI 1978/1458 (made under ss 27(1), 28(1) post).

20 Assessors to Disciplinary Committee

(1) For the purpose of advising the Disciplinary Committee on questions of law arising in proceedings before them there shall in all such proceedings be an assessor to the Disciplinary Committee who shall be a barrister, advocate or solicitor of not less than ten years' standing.

(2) The power of appointing assessors under this section shall be exercisable by the Council, but if no assessor appointed by them is available to act at any particular proceedings the Disciplinary Committee may appoint an assessor under this section to act at those proceedings.

(3) The Lord Chancellor or, in Scotland, the Lord Advocate may make rules as to the functions of assessors appointed under this section, and, in particular, rules under this subsection may contain such provisions for securing—

- (a) that where an assessor advises the Disciplinary Committee on any question of law as to evidence, procedure or any other matters specified in the rules, he shall do so in the presence of every party, or person representing a party, to the proceedings who appears thereat or, if the advice is tendered after the Disciplinary Committee have begun to deliberate as to their findings, that every such party or person as aforesaid shall be informed what advice the assessor has tendered;
- (b) that every such party or person as aforesaid shall be informed if in any case the Disciplinary Committee do not accept the advice of the assessor on any such question as aforesaid,

and such incidental and supplementary provisions, as appear to the Lord Chancellor or the Lord Advocate expedient.

(4) Subject to the provisions of this section, an assessor under this section may be appointed either generally or for any particular proceedings or class of proceedings, and shall hold and vacate office in accordance with the terms of the instrument under which he is appointed.

(5) Any remuneration paid by the Council to persons appointed to act as assessors shall be at such rates as the Council may determine.

(6) The power to make rules conferred by this section shall be exercisable by statutory instrument.

NOTES

Disciplinary Committee. Is the Committee set up by the Insurance Brokers Registration Council under s 14 ante.

Statutory instrument. For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946, Vol 41, title Statutes.

Lord Chancellor. Is the Lord High Chancellor of Great Britain; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

Definitions. For "the Council", see s 1(1) ante; for "functions", see s 29(1) post.

Rules under this section. The Insurance Brokers Registration Council (Disciplinary Committee) Legal Assessor Rules 1978, SI 1978/1503.

*Committees of the Council***21 General power to appoint committees**

(1) The Council may set up a committee for any purpose (other than a purpose for which the Council are required to set up a committee under this Act) and may delegate to a committee set up under this section, with or without restrictions or conditions, as they think fit, any functions exercisable by them except the following—

- (a) the power to make rules under this Act,
- (b) any functions expressly conferred by this Act on any committee set up under any of the foregoing provisions of this Act, and
- (c) subject to any express provision for delegation in the rules, any functions expressly conferred on the Council by rules under this Act.

(2) The number of members of a committee set up under this section and their term of office shall be fixed by the Council.

(3) A committee set up under this Act may include persons who are not members of the Council, but at least two-thirds of the members of every such committee shall be members of the Council.

(4) Every member of a committee set up under this Act who at the time of his appointment was a member of the Council shall, upon ceasing to be a member of the Council, also cease to be a member of the committee:

Provided that for the purposes of this subsection a member of the Council shall not be deemed to have ceased by reason of retirement to be a member thereof if he has again been nominated or elected a member thereof not later than the day of his retirement.

NOTE

Definitions. For "the Council", see s 1(1) ante; for "functions", see s 29(1) post.

*Restriction on use of titles and descriptions***22 Penalty for pretending to be registered, etc**

(1) Any individual who wilfully—

- (a) takes or uses any style, title or description which consists of or includes the expression "insurance broker" when he is not registered in the register, or
- (b) takes or uses any name, title, addition or description falsely implying, or otherwise pretends, that he is registered in the register,

shall be liable on summary conviction to a fine not exceeding [the prescribed sum] or on conviction on indictment to a fine.

(2) Any body corporate which wilfully—

- (a) takes or uses any style, title or description which consists of or includes the expression "insurance broker" when it is not enrolled in the list, or

- (b) takes or uses any name, title, addition or description falsely implying, or otherwise pretends, that it is enrolled in the list,

shall be liable on summary conviction to a fine not exceeding [the prescribed sum] or on conviction on indictment to a fine.

(3) References in this section to the expression "insurance broker" include references to the following related expressions, that is to say "assurance broker", "reinsurance broker" and "reassurance broker".

NOTES

The words in square brackets in sub-s (1), (2) are substituted by virtue of the Magistrates' Courts Act 1980, s 32(2), Vol 27, title Magistrates.

Wilfully. This expression, in the words of Lord Russell of Killowen CJ, in *R v Senior* [1899] 1 QB 283 at 290, 291, [1895-9] All ER Rep 511 at 514, "means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it". See also, in particular, *R v Walker* (1934) 24 Cr App Rep 117; *Eaton v Cobb* [1950] 1 All ER 1016, 114 JP 271; *Arrowsmith v Jenkins* [1963] 2 QB 561, [1963] 2 All ER 210; *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649; *Dibble v Ingleton* [1972] 1 QB 480, sub nom *Ingleton v Dibble* [1972] 1 All ER 275; *Willmott v Atack* [1977] QB 498, [1976] 3 All ER 794; *Wershof v Metropolitan Police Comr* [1978] 3 All ER 540, [1978] Crim LR 424; and *R v Sheppard* [1981] AC 394, [1980] 3 All ER 899, HL.

Summary conviction. Summary jurisdiction and procedure are mainly governed by the Magistrates' Courts Act 1980, Vol 27, title Magistrates, and by rules made under s 144 of that Act.

Prescribed sum. In the prescribed sum within the meaning of the Magistrates Courts Act 1980, s 32, Vol 27, title Magistrates; see the Criminal Justice Act 1982, s 74(1), in the same title. By s 32(9) of the 1980 Act, as amended, the prescribed sum is £2,000 but a different amount may be substituted by order under s 143(1) of that Act.

Conviction on indictment. All proceedings on indictment are to be brought before the Crown Court; see the Supreme Court Act 1981, s 46(1), Vol 11, title Courts. As to the trial of indictments generally, see 11 Halsbury's Laws (4th edn) paras 225 et seq.

Fine. There is no specific limit to the amount of the fine which may be imposed on conviction on indictment, but the fine should be within the offender's capacity to pay; see, in particular, *R v Churchill (No 2)* [1967] 1 QB 190, [1966] 2 All ER 215, CCA; *revid* on other grounds sub nom *Churchill v Walton* [1967] 2 AC 224, [1967] 1 All ER 497, HL; and see also the Bill of Rights (1688), s 1, Vol 10, title Constitutional Law (Pt 1).

Further provisions. For exception from this section, see s 23 post; and as to offences by bodies corporate, see s 24 post.

Definitions. For "enrolled", "insurance broker", "list", "register" and "registered", see s 29(1) post. Note also as to "insurance broker", sub-s (3) above.

23 Exceptions from s 22

(1) Where a practising insurance broker dies, then, during the period of three months beginning with his death or such longer period as the Council may in any particular case allow, the last foregoing section shall not operate to prevent his personal representatives, his surviving spouse or any of his children or trustees on behalf of his surviving spouse or any of his children from taking or using in relation to his business, but in conjunction with the name in which he carried it on, any title which he was entitled to take or use immediately before his death.

(2) Where a practising insurance broker becomes bankrupt, then, during the period of three months beginning with the bankruptcy or such longer period as the Council may in any particular case allow, the last foregoing section shall not operate to prevent his trustee in bankruptcy or, in Northern Ireland, the assignee in bankruptcy, from taking or using in relation to his business, but in conjunction with the name in which he carried it on, and title which he was entitled to take or use immediately before the bankruptcy.

NOTES

Three months beginning with, etc. The use of the words "beginning with" makes it clear that in computing this period the day from which it runs is to be included; see *Hare v Gocher* [1962] 2 QB 641,

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[1962] 2 All ER 763, and *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899 at 909, [1967] 2 All ER 900, CA. See also *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL, as to the day of expiry of periods of a month or a specified number of months.

Personal representatives. For a definition of this expression, see the Administration of Estates Act 1925, s 55(1)(xi), Vol 17, title Executors and Administrators.

Becomes bankrupt. The provisions relevant to this question are contained mainly in the Bankruptcy Act 1914, Pt I, Vol 4, title Bankruptcy and Insolvency (which is repealed and replaced, as from a day or days to be appointed by provisions of the Insolvency Act 1985, in the same title).

Trustee in bankruptcy. As to trustees in bankruptcy generally, see the Bankruptcy Act 1914, Pt IV, Vol 4, title Bankruptcy and Insolvency (as to which, see the note above).

Definitions. For "the Council", see s 1(1) ante; for "practising insurance broker", see s 29(1) post.

24 Offences by bodies corporate

Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

NOTES

Offence . . . committed by a body corporate. Except when the penalty is inappropriate or where, by the nature of the offence, it must be committed by an individual, a corporation may be convicted for the criminal acts (including those requiring mens rea) of the directors and managers who represent the directing mind and will of the corporation and control what it does (*DPP v Kent & Sussex Contractors Ltd* [1944] KB 146, [1944] 1 All ER 119; *R v ICR Haulage Ltd* [1944] KB 551, [1944] 1 All ER 691, CCA; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL), but it cannot be convicted for the criminal acts of its inferior servants or agents unless the offence is one for which an employer or principal may be vicariously liable (*John Henshall (Quarries) Ltd v Harvey* [1965] 2 QB 233, [1965] 1 All ER 725; *Tesco Supermarkets Ltd v Natrass* supra; *R v Andrews-Weatherfoil Ltd* [1972] 1 All ER 65, CA). See further, on the criminal liability of corporations, 9 Halsbury's Laws (4th edn) para 1379 and 11 Halsbury's Laws (4th edn) para 34, and as to vicarious liability, 11 Halsbury's Laws (4th edn) paras 51 et seq.

Consent. There is authority for saying that this presupposes knowledge; see *Re Caughey, ex p Ford* (1876) 1 Ch D 521 at 528, CA, per Jessel MR, and *Lamb v Wright & Co* [1924] 1 KB 857 at 864, [1924] All ER Rep 220 at 223. It is thought, however, that actual knowledge is not necessary; cf *Knox v Boyd* 1941 JC 82 at 86; *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445 at 449, 450, per Devlin J, [1951] WN 383; *James & Son Ltd v Smea* [1955] 1 QB 78 at 91, [1954] 3 All ER 273 at 278 per Parker J; and *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847.

Connivance. See the note "Connived" to s 15 ante.

Neglect. This word implies failure to perform a duty of which the person knows or ought to know; see *Re Hughes, Rea v Black* [1943] Ch 296 at 298, [1943] 2 All ER 269 at 271 per Simonds J. For circumstances in which an offence was held to be attributable to neglect on the part of a director, see *Crickitt v Kursaal Casino Ltd (No 2)* [1968] 1 All ER 139 at 146, 147, [1968] 1 WLR 53, HL and for circumstances in which the opposite was held, see *Huckerby v Elliott* [1970] 1 All ER 189, (1969) 113 Sol Jo 1001.

Purporting to act. The reference to any person who was purporting to act in any such capacity is introduced in view of *Dean v Hiesler* [1942] 2 All ER 340, where a director who had not been duly appointed was held not liable for an offence committed by the company.

Miscellaneous

25 Accounts of Council

(1) The Council shall keep proper accounts of all sums received or paid by them and proper records in relation to those accounts.

(2) The Council shall appoint auditors to the Council who shall be members of a recognised body of accountants.

(3) The Council shall cause their accounts to be audited annually by the auditors to

the Council and as soon as is practicable after the accounts for any period have been audited the Council shall cause them to be published and shall send a copy of them to the Secretary of State together with a copy of any report of the auditors thereon.

NOTES

Send a copy. As to the service of documents, see s 26 post.

Secretary of State. See the note to s 3 ante.

Definitions. For "the Council", see s 1(1) ante; for "recognised body of accountants", see s 29(1) post.

26 Service of documents

Any notice or other document authorised or required to be given under this Act may, without prejudice to any other method of service but subject to any provision to the contrary in rules under this Act, be served by post; and for the purpose of the application to this section of section 26 of the Interpretation Act 1889 (which relates to service by post) the proper address of a person or body corporate to whose registration or enrolment such a document relates shall be his or its address in the register or list.

NOTES

May be served by post. This provision brings into operation the provisions of what is now the Interpretation Act 1978, s 7, Vol 41, title Statutes, to the effect that service is deemed to be effected by properly addressing, prepaying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Service by post may be effected by ordinary or registered letter; see *T O Supplies (London) Ltd v Jerry Creighton Ltd* [1952] 1 KB 42, [1951] 2 All ER 992. It follows that it is also permissible to use the recorded delivery service.

As this provision is permissive only, it is clear that, where a notice is served in a different manner and is received, this constitutes good service; see *Sharpley v Manby* [1942] 1 KB 217, sub nom *Re Sharpley's and Manby's Arbitration* [1942] 1 All ER 66, CA, and *Stylo Shoes Ltd v Prices Tailors Ltd* [1960] Ch 396, [1959] 3 All ER 901.

Definitions. For "enrolment", "list", "register" and "registration", see s 29(1) post.

Interpretation Act 1889, s 26. Repealed by the Interpretation Act 1978, s 25, Sch 3; see now s 7 of, and Sch 2, para 4(1) to, the 1978 Act, Vol 41, title Statutes.

27 Rules etc made by Council

(1) Rules made by the Council under sections 8, 11, 12, 13, 14 or 19 of this Act, the statement drawn up by the Council under section 10 of this Act or any revision of that statement made by the Council under that section shall not come into operation until approved by order of the Secretary of State.

(2) The Secretary of State may approve rules made under section 19 of this Act either as submitted to him or subject to such modifications as he thinks fit; but where the Secretary of State proposes to approve any such rules subject to modifications he shall notify the modifications to the Council and consider any observations of the Council thereon.

(3) The Secretary of State may, after consulting the Council, by order vary or revoke any rules made under section 8, 11 or 12 of this Act or revise the statement under section 10 of this Act.

NOTES

The Council. Is the Insurance Brokers Registration Council; see s 1 ante.

Secretary of State; consulting. See the notes to s 3 ante.

Orders under this section. The Insurance Brokers Registration Council (Code of Conduct) Approval Order 1978, SI 1978/1394; the Insurance Brokers Registration Council (Registration and Enrolment) Rules Approval Order 1978, SI 1978/1395, as amended by SI 1979/490, SI 1982/1406; the Insurance Brokers Registration Council (Constitution of the Investigating Committee) Rules Approval Order 1978, SI 1978/

1456; the Insurance Brokers Registration Council (Constitution of the Disciplinary Committee) Rules Approval Order 1978, SI 1978/1457; the Insurance Brokers Registration Council (Procedure of the Disciplinary Committee) Rules Approval Order 1978, SI 1978/1458; the Insurance Brokers Registration Council (Indemnity Insurance and Grants Scheme) Rules Approval Order 1979, SI 1979/408; the Insurance Brokers Registration Council (Accounts and Business Requirements) Rules Approval Order 1979, SI 1979/489, as amended by Rules approved by SI 1981/1630.

For general provisions as to orders, see s 28 post.

28 Orders

(1) The power to make orders under this Act shall be exercisable by statutory instrument; and any order made under this Act may be varied or revoked by a subsequent order so made.

(2) Any statutory instrument by which that power is exercised, except one containing an order under section 30(3) of this Act or any such order as is mentioned in subsection (3) below, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) An order under section 3(4) or section 27(3) of this Act, an order under paragraph 2 of the Schedule to this Act approving a scheme subject to modifications or an order under paragraph 10 of that Schedule shall not be made unless a draft of the order has been approved by resolution of each House of Parliament.

NOTE

Statutory instrument; subject to annulment. For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946, Vol 41, title Statutes, and as to statutory instruments which are subject to annulment, see ss 5(1), 7(1) of that Act.

29 Interpretation

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

- “approved qualification” and “approved educational institution” have the meanings respectively assigned to them by section 6 of this Act;
- “authorised insurers” means a person permitted under the Insurance Companies Act [1982] . . . to carry on [insurance business of class 13 or of classes 1, 2, 14, 15, 16 and 17 in Schedule 2 to the Insurance Companies Act [1982]];
- “the Council” means the Insurance Brokers Registration Council established pursuant to section 1 of this Act;
- “the Court” means the High Court or, in relation to Scotland, the Court of Session or, in relation to Northern Ireland, a judge of the High Court of Justice in Northern Ireland;
- “disciplinary case” has the meaning assigned to it by section 13 of this Act;
- “employee”, in relation to a body corporate, includes a director of the body corporate and “employed” shall be construed accordingly;
- “enrolled” means enrolled in the list and “enrolment” shall be construed accordingly;
- “functions” includes powers and duties;
- “insurance business” means insurance business [other than industrial assurance business (within the meaning of section 1(2) of the Industrial Assurance Act 1923 or Articles 2(2) and 3(1) of the Industrial Assurance (Northern Ireland) Order 1979)], and “insurance broker” shall be construed accordingly;
- “insurance company” means a person or body of persons (whether incorporated or not) carrying on insurance business;
- “list” means the list of bodies corporate carrying on business as insurance brokers;

"practising insurance broker" means a registered insurance broker who is carrying on business as an insurance broker;

"prescribed" means prescribed by rules under this Act;

"recognised body of accountants" means any one of the following, namely—

the Institute of Chartered Accountants in England and Wales;

the Institute of Chartered Accountants of Scotland;

the Association of Certified Accountants;

the Institute of Chartered Accountants in Ireland;

any other body of accountants established in the United Kingdom and for the time being recognised for the purposes of [section 389(1)(a) of the Companies Act 1985] by the Secretary of State;

"register" means the register of insurance brokers and "registered" and "registration" shall be construed accordingly;

"registered insurance broker" means a person who is registered in the register;

"the registrar" means the registrar of the Council appointed under section 8(1) of this Act.

(2) References in this Act to any other enactment (including an enactment of the Parliament of Northern Ireland and an Order in Council under the Northern Ireland Act 1974) shall be construed as references thereto, as amended, and as including references thereto as extended, by or under any subsequent enactment.

NOTES

In sub-s (1): in the definition "authorised insurers" the words omitted were repealed by the Insurance Companies Act 1980, s 4(3), Sch 5, the date "1982" was substituted in both places where it occurs by the Insurance Companies Act 1982, s 99(2), Sch 5, para 18, and the other words in square brackets were substituted by the Insurance Companies Act 1981, s 36(1), Sch 4, Pt II, para 26; in the definition "insurance business" the words in square brackets were substituted by the Insurance Companies Act 1981, s 36(1), Sch 4, Pt II, para 26; in the definition "recognised body of accountants" the words in square brackets were substituted by the Companies Consolidation (Consequential Provisions) Act 1985, s 30, Sch 2.

Person. See the note "Persons" to s 12 ante.

Body corporate. See the note to s 1 ante.

United Kingdom; Secretary of State. See the notes to s 3 ante.

Insurance Companies Act 1982, Sch 2. See Pt 2 of this title post. Permission to carry on business of the classes listed is granted under ss 3-5 of that Act.

Industrial Assurance Act 1923, s 1(2). See Vol 19, title Friendly Societies and Industrial Assurance.

Companies Act 1985, s 389(1)(a). See Vol 8, title Companies.

Northern Ireland Act 1974. See Vol 31, title Northern Ireland (Pt 2).

Industrial Assurance (Northern Ireland) Order 1979. SI 1979/1574.

30 Short title, extent and commencement

(1) This Act may be cited as the Insurance Brokers (Registration) Act 1977.

(2) This Act extends to Northern Ireland.

(3) Subject to subsection (4) below, this Act shall come into operation on such date as the Secretary of State may by order appoint and different dates may be appointed for different provisions and for different purposes.

(4) The day appointed for the coming into operation of section 22 of this Act shall not be earlier than the expiration of a period of two years beginning with the day appointed for the coming into operation of section 1 of this Act.

NOTES

Secretary of State. See the note to s 3 ante.

Two years beginning with, etc. See the note "Three months beginning with, etc" to s 23 ante.

Orders under this section. The Insurance Brokers (Registration) Act 1977 (Commencement No 1) Order 1977, SI 1977/1782 (bringing ss 1, 6-8, 10-12, 19(4)-(6), 21, 25-30 and the Schedule into force on

1 December 1977); the Insurance Brokers (Registration) Act 1977 (Commencement No 2) Order 1978, SI 1978/1393 (bringing ss 2-5, 9, 13-18, 19(1)-(3) and 20 into force on 20 October 1978); and the Insurance Brokers (Registration) Act 1977 (Commencement No 3) Order 1980, SI 1980/1824 (bringing the provisions of the Act which are not already in operation, namely ss 22-24, into operation on 1 December 1981).

SCHEDULE

Section 1

CONSTITUTION, ETC. OF INSURANCE BROKERS REGISTRATION COUNCIL

1. The Council shall consist of—

- (a) twelve persons chosen to represent registered insurance brokers of whom one shall be Chairman of the Council;
- (b) five persons nominated by the Secretary of State of whom one shall be a barrister, advocate or solicitor, another shall be a member of a recognised body of accountants and a third shall be a person appearing to the Secretary of State to represent the interests of persons who are or may become policyholders of insurance companies.

2.—(1) The persons chosen to represent registered insurance brokers in the first instance shall be nominated by the British Insurance Brokers' Association.

(2) The persons chosen to represent registered insurance brokers after the retirement of those nominated under sub-paragraph (1) above shall be elected by registered insurance brokers in accordance with a scheme which—

- (a) shall be made by the Council;
- (b) shall not come into operation until approved by order of the Secretary of State; and
- (c) may be varied or revoked by a subsequent scheme so made and so approved.

(3) The Secretary of State may approve a scheme either as submitted to him or subject to such modifications as he thinks fit; but where the Secretary of State proposes to approve a scheme subject to modifications he shall notify the modifications to the Council and consider any observations of the Council thereon.

(4) The Council shall submit a scheme to the Secretary of State for approval before the expiration of a period of two years beginning with the day appointed for the coming into operation of section 1 of this Act.

(5) In the exercise of any functions under this paragraph due regard shall be had to the desirability of securing that the Council includes persons representative of all parts of the United Kingdom.

3. Nominations of the first members of the Council shall so far as practicable be made before the day appointed for the establishment of the Council in time to enable the persons nominated to assume membership on its establishment.

4.—(1) The term of office of—

- (a) members nominated by the British Insurance Brokers' Association shall be such period, not exceeding four years, as may be fixed by the scheme;
- (b) members elected by registered insurance brokers shall be such period as may be fixed by the scheme;
- (c) members nominated by the Secretary of State shall be such period, not exceeding three years, as may be fixed by the Secretary of State.

(2) In this paragraph "the scheme" means the scheme or schemes under paragraph 2 above which are for the time being in operation.

5. A member of the Council may at any time, by notice in writing addressed to the registrar, resign his office.

6.—(1) A person nominated or elected to fill a casual vacancy among the members of the Council shall hold office during the remainder of the term of office of the person whose vacancy he has filled.

(2) Any vacancy other than a casual vacancy in the membership of the Council shall be filled before the date on which the vacancy occurs.

7. A person ceasing to be a member of the Council shall be eligible to be again nominated or elected a member.

8.—(1) The Council shall have power to do anything which in their opinion is calculated to facilitate the proper discharge of their functions.

(2) The Council shall, in particular, have power—

- (a) to appoint, in addition to a registrar, such officers and servants as the Council may determine;
- (b) to pay to the members of the Council or their committees such fees for attendance at meetings of the Council or their committees and such travelling and subsistence allowances while attending such meetings or while on any other business of the Council as the Council may determine;
- (c) to pay to their officers and servants such remuneration as the Council may determine;
- (d) as regards any officers or servants in whose case they may determine to do so, to pay to, or in respect of them, such pensions and gratuities, or provide and maintain for them such superannuation schemes (whether contributory or not), as the Council may determine;
- (e) subject to the provisions of section 1 of the Borrowing (Control and Guarantees) Act 1946 or, in Northern Ireland, of section 2 of the Loans Guarantee and Borrowing Regulation Act (Northern Ireland) 1946 and of any order under those provisions for the time being in force, to borrow such sums as the Council may from time to time require for performing any of their functions under this Act.

(3) The powers of the Council and any of its committees may be exercised notwithstanding any vacancy, and no proceedings of the Council or of any of its committees shall be invalidated by any defect in the nomination or election of a member.

9. The Council may make standing orders for regulating the proceedings (including quorum) of the Council and of any committee thereof:

Provided that orders shall not be made under this paragraph with respect to the proceedings of the Disciplinary Committee.

10. The Secretary of State may, after consulting the Council, by order so amend the provisions of this Schedule as to vary the number of members and the manner in which they are chosen or appointed.

NOTES

Para 1: Secretary of State. See the note to s 3 ante.

Para 2: Two years beginning with, etc. See the note "Three months beginning with, etc" to s 23 ante.

Day appointed for the coming into operation of s 1. S 1 came into operation on 1 December 1977 by virtue of the Insurance Brokers (Registration) Act 1977 (Commencement No 1) Order 1977, SI 1977/1782, made under s 30 ante.

United Kingdom. See the note to s 3 ante.

Para 5: Writing. See the note to s 7 ante.

Para 9: Orders . . . shall not be made . . . with respect to . . . the Disciplinary Committee. The proceedings of the Disciplinary Committee are to be regulated by rules made under ss 14(2), (3), 19(4) ante.

Para 10: Consulting. See the note to s 3 ante.

Definitions. For "the Council", see s 1(1) ante; for "functions", "insurance company", "recognised body of accountants", "registered insurance broker" and "the registrar", see s 29(1) ante. Note as to "the scheme", para 4(2) above.

Borrowing (Control and Guarantees) Act 1946, s 1. See Vol 30, title Money (Pt 1).

Loans Guarantee and Borrowing Regulation Act (Northern Ireland) 1946. 1946 c 18 (NI); not printed in this work.

Orders under this Schedule. The Insurance Brokers Registration Council Election Scheme Approval Order 1980, SI 1980/62 (made under para 2(2)(b) above) approves, and sets out in the Schedule to the Order, an election scheme made by the Council.

For general provisions as to orders, see s 28 ante.

LAW CONCERNING THE CONTROL OF INSURANCE SOLICITING

Law No. 171, July 15, 1948 (effective on the same date subject to the Supplementary Provision of this Law)

Revised by Law No. 184, June 1, 1949 and Law No. 152, April 20, 1951

(Objects)

Article 1. The objects of this Law are to protect the interests of persons effecting insurance and also to contribute to the sound development of insurance business by way of enforcing registration of life insurance solicitors and non-life insurance agents and controlling their soliciting activities.

(Revised by Law No. 152 of 1951)

(Definitions)

Article 2. In this Law, "life insurance solicitor" means an officer (except an officer who has the power to represent his company and an auditor) or an employee of a life insurance company or an employee of any of these persons, or a body (including unincorporated association and foundation) or an individual commissioned by a life insurance company to act as an intermediary in conclusion of life insurance contracts or an officer (except an officer who has the power to represent his body and an auditor) or administrator of such body or an employee of such body or of such individual, who acts as such intermediary for the life insurance company.

2. In this Law, "non-life insurance agent" means a body (including unincorporated association and foundation; the same shall apply hereinafter.) or an individual commissioned by a non-life insurance company to act as an agent in conclusion of non-life insurance contracts, but excluding officials and employees of the non-life insurance company.

3. In this Law, "soliciting" means to act as an agent or intermediary in conclusion of insurance contracts.

4. In this Law, "insurance company concerned" means an insurance company for which a life insurance solicitor, or an official or employee of a non-life insurance company, or a non-life insurance agent or an official or employee of such agent solicits insurance contracts.

5. In this Law, "writings and drawings for soliciting" means newspaper advertisements, printed matters, signboard and all other writings and drawings used for the purpose of soliciting or of facilitating soliciting.

6. An insurance company in this Law includes a foreign insurer

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licensed under the Law concerning Foreign Insurers (Law No. 184 of 1949) (hereinafter referred to as a "foreign insurer").

(Revised by Law No. 184 of 1949, Law No. 152 of 1951)

(Registration of life insurance solicitors and non-life insurance agents)

Article 3. A life insurance solicitor or a non-life insurance agent shall be registered pursuant to the provisions of this Law.

2. A person who wishes to be registered under the preceding paragraph shall produce to the Minister of Finance an application for registration stating therein the particulars mentioned below and shall pay the registration fee pursuant to the provisions of the government ordinance:

- (1) the name, trade name or title of the applicant;
- (2) the domicile or location of business office of the applicant;
- (3) the trade name or title of the insurance company concerned and
- (4) in case of the applicant being engaged in other business than insurance business, the kind(s) of such business

3. To the application for registration under the last preceding paragraph the documents mentioned below shall be annexed:

- (1) a document certifying that the applicant is a life insurance solicitor or a non-life insurance agent; provided, however, that in the case of a commissioned life insurance solicitor or a non-life insurance agent, such document shall be limited to a contract of commission for soliciting;
- (2) in the case of the applicant being a juridical person or an unincorporated association or foundation, the articles of incorporation or the act of endowment (in the case of the applicant being an unincorporated association or foundation, a document of like kind; the same shall apply in Article 7 also.) of the applicant, the personal history and the abstract of family register of its officer or administrator or documents of like kinds and the written oath that the juridical person or unincorporated association or foundation does not fall under any of the persons mentioned in paragraph 1 (2), (3) and (5) of Article 5;
- (3) in the case of the applicant being an individual, the personal history and the abstract of family register of the applicant (in case the applicant has his legal representative, of the applicant and also of his legal representative) or documents of like kinds, and the written oath that he does not fall under any of the persons mentioned in paragraph 1 (1) to (4) of Article 5.

(Revised by Law No. 152 of 1951)

(Registers and notice of registration)

Article 4. The life insurance solicitors register and the non-life insurance

LAW CONCERNING THE CONTROL OF INSURANCE SOLICITING 125

agents register shall be kept by the Ministry of Finance.

2. In case an application for registration under the last preceding Article has been produced to the Minister of Finance, he shall immediately register the particulars mentioned below in the life insurance solicitors register or the non-life insurance agents register provided in the preceding paragraph, except in the cases falling under the provisions of Article 5:

- (1) the name, trade name or title of the applicant;
- (2) the domicile or location of business office of the applicant;
- (3) the trade name or title of the insurance company concerned;
- (4) the date of registration and
- (5) any other necessary matter in relation to registration.

3. When the Minister of Finance has registered pursuant to the provision of the last preceding paragraph, he shall, without delay, give the applicant a written notice to that effect.

(Revised by Law No. 152 of 1951)

(Refusal of registration)

Article 5. In case of the application for registration having been produced pursuant to the provisions of Article 3, if the applicant falls under any of the persons mentioned below or if there is a false statement or an omission in regard to any of the important particulars in the application for registration or in the documents annexed thereto, the Minister of Finance shall refuse his registration:

- (1) a bankrupt who is not yet rehabilitated;
- (2) a person who was sentenced to imprisonment under any law or to a fine under this Law and who is under the condition that five years have not yet elapsed from the termination of execution of the sentence or from the date when it was decided that the sentence was not to be executed;
- (3) a person whose registration was cancelled pursuant to the provisions of this Law and who is under the condition that five years have not yet elapsed from the date of such cancellation;
- (4) a minor who has not same full legal capacity as that of an adult in regard to business or a person adjudged incompetent and whose legal representative falls under any of the persons mentioned in (1) to (3) above;
- (5) a juridical person or unincorporated association or foundation which has an official or administrator who falls under any of the persons mentioned in (1) to (3) above and
- (6) a person who misappropriated premiums received by him for other purposes or did similar act, or did substantially improper act in connection with soliciting.

2. In case the Minister of Finance intends to refuse registration pursuant to the provision of the preceding paragraph, he shall give a previous notice to that effect to the applicant for registration, ordering the

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applicant or his proxy to appear before the Ministry of Finance and shall cause an official designated by him to hold a hearing in order to give the applicant an opportunity to produce evidences for vindication.

3. In the case of the last preceding paragraph, if the person to be heard does not, without any justifiable reason, appear in the hearing, the Minister of Finance may refuse the registration without holding a hearing.

(Revised by Law No. 152 of 1951)

(Notice of refusal of registration)

Article 6. When the Minister of Finance has refused registration under the last preceding Article, he shall, without delay, give the applicant a written notice to that effect stating the reason for refusal therein.

(Revised by Law No. 152 of 1951)

(Matters to be reported by life insurance solicitor or non-life insurance agent)

Article 7. When an alteration has taken place in the particulars mentioned in paragraph 2 of Article 3 or in the matters stated in the document mentioned in paragraph 3 (1) of the same Article or in those stated in the articles of incorporation or the act of endowment mentioned in the same paragraph (2), the life insurance solicitor or the non-life insurance agent shall, without delay, report to the Minister of Finance to that effect.

2. When a life insurance solicitor or a non-life insurance agent has come to fall under any of the persons mentioned in paragraph 1 (1), (2), (4) and (5) of Article 5 or when it has been found that at the time of registration he fell under any of the persons mentioned in the same paragraph (1) to (5), he shall, without delay, report to the Minister of Finance to that effect.

3. In case a life insurance solicitor or a non-life insurance agent has come to fall under any of the items mentioned below, the person mentioned in the relevant item shall, without delay, report to the Minister of Finance to that effect:

- (1) in case of the business of soliciting having been discontinued, the person who was the said life insurance solicitor or the non-life insurance agent;
- (2) in case of an individual having been dead, his successor;
- (3) in case of an individual having become bankrupt or of a juridical person having been dissolved by bankruptcy, his or its receiver;
- (4) In case of a juridical person having been dissolved by amalgamation, the person who was its executive officer;
- (5) in case of a juridical person having been dissolved by any other reason than amalgamation or bankruptcy, its liquidator or
- (6) in case of an unincorporated association or foundation having ceased to exist, the person who was its administrator.

(Revised by Law No. 152 of 1951)



LAW CONCERNING THE CONTROL OF INSURANCE SOLICITING 127

(Cancellation of registration)

Article 7-2. The Minister of Finance shall cancel the registration if a life insurance solicitor or a non-life insurance agent falls under any of the items mentioned below, except the case of cancellation by the Minister of Finance of the registration pursuant to the provisions of paragraph 1 of Article 20:

- (1) when the person has come to fall under any of the persons mentioned in paragraph 1 (1), (2), (4) and (5) of Article 5 or when it has been found that at the time of registration the person fell under any of the persons mentioned in the same paragraph (1) to (5);
- (2) when it has been found that at the time of registration the person fell under the person mentioned in paragraph 1 (6) of Article 5 or
- (3) when he has, by illicit means, been registered under paragraph 2 of Article 4.

2. The provisions of paragraphs 2 and 3 of Article 5 shall apply mutatis mutandis in the case of cancellation of registration under the preceding paragraph. In this case, the words "the applicant for registration" in paragraph 2 of Article 5 shall be substituted by the words "the said life insurance solicitor or non-life insurance agent"

(Added by Law No. 152 of 1951)

(Erasure from the register)

Article 7-3. In the cases mentioned below, the Minister of Finance shall erase the registration of the life insurance solicitor or the non-life insurance agent from the life insurance solicitors register or the non-life insurance agents register:

- (1) when the registration has been cancelled pursuant to the provision of the last preceding Article or paragraph 1 of Article 20;
- (2) when a report has been made pursuant to the provision of paragraph 3 of Article 7 or
- (3) when the Minister of Finance has confirmed that a life insurance solicitor or a non-life insurance agent has come to fall under any of the items of paragraph 3 of Article 7, after, based on his judgment of existence of such fact, he gave a previous notice of his judgment to a person mentioned in the relevant item of the same paragraph, ordering the person or his proxy to appear before the Ministry of Finance and caused a designated official to hold a hearing in order to give such person an opportunity to produce evidences for vindication.

(Added by Law No. 152 of 1951)

(Report of officials or employees of non-life insurance agent)

Article 8. In case a non-life insurance agent causes its officers (officers other than auditors, having no power to represent it; the same shall apply hereinafter except in Articles 10 and 16.) or its or his employees to be

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engaged in soliciting, the agent shall report their names and domiciles to the Minister of Finance.

2. In case any alteration has taken place in the matters reported under the preceding paragraph or any of the officers or employees reported under the same paragraph has ceased to be engaged in soliciting or died, the non-life insurance agent shall, without delay, report to the Minister of Finance to that effect.

(Revised by Law No. 152 of 1951)

(Persons qualified for soliciting)

Article 9. Any person, except officers or employees of a non-life insurance company or life insurance solicitors or non-life insurance agents registered under paragraph 2 of Article 4, shall not be engaged in soliciting.

(Revised by Law No. 152 of 1951)

(Restrictions on conduct of life insurance solicitor)

Article 10. A life insurance company shall not commission a life insurance solicitor of any other life insurance company to solicit on their behalf.

2. A life insurance solicitor shall neither concurrently be an officer or employee of any other life insurance company or employee of any of these persons, nor be engaged in soliciting under commission of any other life insurance company or an official or employee of the person engaged in soliciting under commission of any other life insurance company.

(Revised by Law No. 152 of 1951)

(Liability of the insurance company concerned for damages)

Article 11. The insurance company concerned shall be liable for loss caused to persons effecting insurance by its life insurance solicitor, or an official or employee of the non-life insurance company, or its non-life insurance agent in relation to his soliciting.

2. The provision of the preceding paragraph shall not apply in the following cases:

- (1) in the case of the person who has caused such loss being a life insurance solicitor who is an official of a life insurance company or his employee, or an official of a non-life insurance company who is engaged in soliciting, if the insurance company has exercised due diligence in nominating the said official and further has endeavored to prevent loss caused by him to persons effecting insurance in relation to his soliciting;
- (2) in the case of the person who has caused such loss being a life insurance solicitor who is an employee of a life insurance company or his employee, or an employee of a non-life insurance company who is engaged in soliciting, if the insurance company concerned has exercised due diligence in employing the said employee (excluding an employee of an employee of a life insurance company)

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and further has endeavored to prevent loss caused by him to persons effecting insurance in relation to his soliciting or

(3) in the case of the person who has caused such loss being a life insurance solicitor who is commissioned by a life insurance company or is an officer or employee of such commissioned solicitor, or a non-life insurance agent, if the insurance company concerned has exercised due diligence in commissioning the life insurance solicitor or the non-life insurance agent and further has endeavored to prevent loss caused by him to persons effecting insurance in relation to his soliciting.

3. The right of the insurance company concerned of claim for reimbursement against the life insurance solicitor, or the official or employee of the non-life insurance company or the non-life insurance agent shall not be prejudiced by the provision of paragraph 1.

4. The provision of Article 724 of the Civil Code (Law No. 89 of 1896 as revised) shall apply mutatis mutandis to the right of claim under paragraph 1.

(Revised by Law No. 152 of 1951)

(Method of keeping insurance premiums in custody by non-life insurance agent)

Article 12. In case a non-life insurance agent keeps in custody the insurance premiums received by him on behalf of the insurance company concerned, he shall keep them in a method clearly separated from his own assets.

2. Necessary matters for keeping of insurance premiums under the preceding paragraph shall be provided for by the Ministry of Finance ordinance.

(Revised by Law No. 152 of 1951)

(Records of life insurance solicitors or non-life insurance agents)

Article 13. The insurance company concerned shall, pursuant to the provision of the Ministry of Finance ordinance, keep the records of life insurance solicitors or non-life insurance agents at its head office or principal office, or at its branch offices or subordinate offices.

2. Any interested person may demand the insurance company concerned for perusal of the records mentioned in the preceding paragraph.

(Revised by Law No. 152 of 1951)

(Writings and drawings for soliciting)

Article 14. In writings and drawings for soliciting used by officers or employees of a non-life insurance company, or by life insurance solicitors or non-life insurance agents (including officers and employees of a non-life insurance agent reported pursuant to the provision of paragraph 1 of Article 8: the same shall apply hereinafter in this Article and Article 19.)

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shall be stated the trade name or title of the insurance company concerned, or the name, trade name or title of the life insurance solicitor or the non-life insurance agent.

(Revised by Law No. 152 of 1951)

(Matters which shall not be stated in writings and drawings for soliciting)

Article 15. In case particulars concerning the assets and liabilities of an insurance company are stated in writings and drawings for soliciting, particulars different from those stated in the documents produced to the Minister of Finance pursuant to the provision of paragraph 1 of Article 82 of the Insurance Business Law (Law No. 41 of 1939 as revised) shall not be stated therein.

2. In writings and drawings for soliciting, matters concerning estimate of distribution in future of profits or surplus of an insurance company shall not be stated.

3. The provisions of the two preceding paragraphs shall apply mutatis mutandis in such cases as particulars concerning the assets and liabilities of and matters concerning estimate of distribution in future of profits or surplus of an insurance company are made known to the general public by means of broadcast, cinema, speech, etc. for the purpose of soliciting or of facilitating soliciting.

(Prohibited acts concerning conclusion or soliciting of insurance contracts)

Article 16. Officers or employees of a non-life insurance company, or life insurance solicitors or non-life insurance agents shall not, in connection with conclusion or soliciting of insurance contracts, do the following acts:

- (1) act of making misrepresentations to the persons effecting insurance or the insured, or act of advising them of comparison with other insurance contract(s) in respect only of a part of the terms and conditions of the insurance contract, which may cause them to misunderstand that the solicited insurance contract is more favorable to them than other insurance contract(s), or act of not advising them of material matters in the terms and conditions of the insurance contracts;
- (2) act of preventing the persons effecting insurance or the insured to disclose material facts to the insurance company or act of inducing them not to disclose such facts;
- (3) act of inducing the persons effecting insurance or the insured to make misrepresentations to the insurance company in respect of material facts;
- (4) act of promising the persons effecting insurance or the insured to offer special benefits, or act of offering to them discount or rebate of premium or any other special benefit or

LAW CONCERNING THE CONTROL OF INSURANCE SOLICITING 131

- (5) act of causing a person effecting insurance or the insured to apply for a new insurance contract by way of unreasonable termination of the insurance contract then in force (hereinafter referred to as "existing insurance contract" in this item), or act of unreasonably terminating the existing insurance contract by way of causing him to apply for a new insurance contract, or act of unreasonably terminating the existing insurance contract, or act of unreasonably causing him to apply for an insurance contract, or act of inducing him to do such things.
2. The provision of the preceding paragraph (4) shall not apply in case the act is done by an insurance company on the base of the documents mentioned in paragraph 2 of Article 1 of the Insurance Business Law.
(Revised by Law No. 152 of 1951)

(Prohibition of own-case agent)

Article 17. A non-life insurance agent shall not, as his primary purpose, solicit insurance contracts of which the person effecting insurance or the insured is himself or his employer.

2. In case the total amount of premiums on the insurance contracts solicited by a non-life insurance agent, of which the person effecting insurance or the insured is himself or his employer, has come to exceed fifty percent (50%) of the total amount of premiums on all insurance contracts solicited by him, he shall, in so far as the application of the provision of the preceding paragraph is concerned, be deemed to be one whose primary purpose is to solicit insurance contracts of which the person effecting insurance or the insured is himself or his employer.

(Prohibition of payment of commission)

Article 18. A life insurance company or non-life insurance company shall neither commission any person to be engaged in soliciting nor pay any person commission, remuneration or any other consideration in relation to soliciting, except in the case of such commission or payment being made by a life insurance company to its life insurance solicitors registered under paragraph 2 of Article 4 or by a non-life insurance company to its officers, employees or non-life insurance agents registered under the same paragraph.

2. The provision of paragraph 2 of Article 16 shall apply mutatis mutandis in the case of the preceding paragraph.

3. A life insurance solicitor or non-life insurance agent shall neither cause or commission any person to be engaged in soliciting nor pay commission, remuneration or any other consideration in relation to soliciting, except in the case of such causing, commission or payment being made by a life insurance solicitor to other life insurance solicitors registered under paragraph 2 of Article 4 or by a non-life insurance agent to its officers or employees reported under paragraph 1 of Article 8 or

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other non-life insurance agents registered under paragraph 2 of Article 4.
(Revised by Law No. 152 of 1951)

(Report and examination)

Article 19. The Minister of Finance may order life insurance solicitors or non-life insurance agents to present the writings or drawings used by them or to produce reports on their business, or may issue to them necessary orders in regard to their use of the writings or drawings, or may cause his staff to examine their books, documents, etc. In the last case, his staff shall carry with him a certificate indicating his official status and shall show it to interested persons when requested to do so.

(Measures against illegal acts of life insurance solicitor or non-life insurance agent)

Article 20. When the Minister of Finance considers that a life insurance solicitor or non-life insurance agent falls under any of the cases mentioned below, he may order the suspension of business of such solicitor or agent for the period designated by him or may cancel the registration of such solicitor or agent:

- (1) in case a solicitor or agent has contravened this Law or any order issued by the Minister of Finance under this Law, or any other law or ordinance, or
- (2) in case a solicitor or agent has done substantially improper act other than (1) above in relation to his soliciting.

2. The provisions of paragraphs 2 and 3 of Article 5 and Article 6 shall apply mutatis mutandis to suspension of business and cancellation of registration under the preceding paragraph. In this case, the words (a) "the applicant for registration" in paragraph 2 of Article 5 and (b) "if the person to be heard does not, without any justifiable reason, appear in the hearing," in paragraph 3 of Article 5 shall respectively be substituted by the words (a) "the said life insurance solicitor or non-life insurance agent" and (b) "if the person to be heard does not, without any justifiable reason, appear within one month from the date when he was ordered to appear".

(Revised by Law No. 152 of 1951)

(Exemption from application of provisions of this Law to officers, etc. of foreign life insurers)

Article 21. The provisions of Articles 3 to 7-3, 9 and 20 (only the part thereof regarding cancellation of registration) shall not apply to officers and employees of foreign life insurers.

(Revised by Law No. 152 of 1951)

(Penal provisions-1)

Article 22. A person who falls under any of the persons mentioned below shall be liable to imprisonment for a term not exceeding one year, or to a

LAW CONCERNING THE CONTROL OF INSURANCE SOLICITING 133

fine not exceeding ¥10,000:

- (1) a person who has contravened the provision of Article 9;
- (2) a person who has contravened the provision of paragraph 2 of Article 10;
- (3) a person who has contravened the provision of Article 15;
- (4) a person who has contravened the provision of Article 16;
- (5) a person who has, in contravention of the provision of paragraph 3 of Article 18, caused or commissioned others to be engaged in soliciting, and
- (6) a person who has, in contravention of the order to suspend his business given under Article 20, been engaged in soliciting insurance contracts.

2. Any of the persons mentioned in the preceding paragraph may be liable to both imprisonment and a fine depending on the circumstances of his act.

(Penal provisions-2)

Article 23. In case of contravention of the provision of paragraph 1 of Article 10 or of a commission to be engaged in soliciting having been made in contravention of the provision of paragraph 1 of Article 18, the representative, proxy, employee or other person engaged in the business of the life insurance company or non-life insurance company, who has committed such offence shall be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding ¥10,000.

(Revised by Law No. 152 of 1951)

(Penal provisions-3)

Article 24. A person who falls under any of the persons mentioned below shall be liable to imprisonment for a term not exceeding six months, or to a fine not exceeding ¥5,000:

- (1) a person who has contravened the provision of paragraph 1 of Article 12 and
- (2) a person who has contravened the ordinance issued under paragraph 2 of Article 12.

(Penal provisions-4)

Article 25. A person who falls under any of the persons mentioned below shall be liable to a fine not exceeding ¥5,000:

- (1) a person who has contravened the provision of Article 14;
- (2) a person who has contravened an order given under Article 19 and
- (3) a person who has refused, interrupted in or evaded the examination conducted under Article 19.

(Revised by Law No. 152 of 1951)

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(Penal provisions-5)

Article 26. A person who has failed to report under Article 7 or 8 shall be liable to a non-penal fine not exceeding ¥5,000.
(Revised by Law No. 152 of 1951)

(Penal provisions-6)

Article 27. In case a representative of a juridical person (including unincorporated association or foundation having its representative or administrator; the same shall apply hereinafter in this paragraph.) or a proxy, employee or other person engaged in the business of a juridical person or of an individual has committed any of the offences mentioned in Articles 22 to 25 in relation to the business of the juridical person or of the individual, not only the person who has committed the offence shall be liable to punishment under the relevant Article but the juridical person or the individual shall also be liable to a fine stipulated in the relevant Article out of such four Articles.

2. In case an unincorporated association or foundation is liable to punishment under the preceding paragraph, its representative or administrator shall represent such association or foundation in its legal proceedings, and also the laws relating to criminal proceedings, which are applicable in case of the accused being a juridical person, shall apply *mutatis mutandis*.

Extract from Supplementary Provisions

This law shall be effective as from the date of its promulgation; provided, however, that (a) the provisions of Article 3 (including the case of application thereof with necessary alterations under Article 21) and (b) those of Articles 9 and 18 shall respectively be effective as from the date when (a) three months and (b) six months have elapsed after the date of enforcement of this Law.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ENFORCEMENT REGULATIONS OF THE LAW CONCERNING THE CONTROL OF INSURANCE SOLICITING

(Though there is no title of each article in the original text of the above Regulations, the translator has, for readers' convenience, taken the liberty of giving a title to each article and inserting the arrangement of articles in this translation).

ARRANGEMENT OF ARTICLES

Articles

1. Form of application for registration
2. Application for registration or report by insurance company on behalf of life insurance solicitor, non-life insurance agent, etc.
3. (Repealed)
4. (Repealed)
5. Deposit of insurance premiums in financial institution by non-life insurance agent-1
6. Deposit of insurance premiums in financial institution by non-life insurance agent-2
7. Detailed statement of income and outgo of non-life insurance agent
8. Matters to be stated in the record
9. (Repealed)
10. Certificate of status of life insurance solicitor
11. Date from which the total amount of premiums is calculated
12. Form of certificate for examination

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ENFORCEMENT REGULATIONS OF THE LAW CONCERNING THE CONTROL OF INSURANCE SOLICITING

Ministry of Finance Ordinance No. 97, October 22, 1948 (effective on the same date)

Revised by the following Ministry of Finance Ordinances; No. 38, April 20, 1951, No. 55, June 19, 1954 and No. 3, March 20, 1981

In order to put the Law concerning the Control of Insurance Soliciting into effect, the Enforcement Regulations of the Law concerning the Control of Insurance Soliciting are hereby issued.

(Form of Application for registration)

Article 1. The application for registration under paragraph 2 of Article 3 of the Law concerning the Control of Insurance Soliciting (Law No. 171 of 1948; hereinafter referred to as "the Law") shall be prepared in the Form No. 1 attached hereto.

(Application for registration or report by insurance company on behalf of life insurance solicitor, non-life insurance agent, etc.)

Article 2. A life insurance solicitor, non-life insurance agent or a person falling under any of paragraph 3 (1) to (6) of Article 7 of the Law may cause the insurance company concerned to make, on his behalf, the application for registration or the report required by the provisions of paragraph 2 of Article 3 or Article 7 or 8 of the Law.

(Revised by the Ministry of Finance Ordinance (hereinafter referred to as "M.O.F.O.") No. 38 of 1951)

Articles 3 and 4. (Repealed by M.O.F.O. No. 38 of 1951)

(Deposit of insurance premiums in financial institution by non-life insurance agent-1)

Article 5. When a non-life insurance agent has received insurance premiums on behalf of the insurance company concerned, he shall, without delay, remit them to the insurance company concerned or deposit them in post offices, banks or other institutions accepting savings or deposits.

2. The bank deposit or postal savings mentioned in the preceding paragraph shall be kept in separate account for each of different insurance

companies concerned; provided that this shall not apply in the case designated by the Minister of Finance in respect of a non-life insurance agent commissioned by two or more insurance companies.

3. The bank deposit or postal savings mentioned in paragraph 1 shall be kept in separate account from other deposits or savings held by the non-life insurance agent concerned.

(Revised by M.O.F.O. No. 38 of 1951)

(Deposit of insurance premiums in financial institution by non-life insurance agent-2)

Article 6. The bank deposit or postal savings mentioned in the last preceding Article shall not be used in any other case than the following cases.

- (1) where the bank deposit or postal savings are withdrawn for the purpose of remitting the premiums to the insurance company concerned
- (2) where the bank deposit or postal savings are withdrawn for the purpose of returning a premium to a policyholder
- (3) where the bank deposit or postal savings are withdrawn for the purpose of applying the same to the commissions, remunerations or other considerations which the non-life insurance agent is entitled to receive from the insurance company concerned
- (4) where interest on the bank deposit or postal savings is withdrawn
- (5) in other cases designated by the insurance company concerned.

(Revised by M.O.F.O. No. 38 of 1951)

(Detailed statement of income and outgo of non-life insurance agent)

Article 7. A non-life insurance agent shall keep a detailed statement of income and outgo according to the Form No. 2 attached hereto in respect of the premiums received by him on behalf of the insurance company concerned.

(Revised by M.O.F.O. No. 38 of 1951)

(Matters to be stated in the record)

Article 8. In the record provided in Article 13 of the Law shall be stated the following matters:

- (1) names, trade names or titles of life insurance solicitors or non-life insurance agents
- (2) domiciles or locations of offices of life insurance solicitors or non-life insurance agents
- (3) dates on which they were employed or commissioned by the insurance company concerned
- (4) kinds of insurance business transacted by non-life insurance agents.

(Revised by M.O.F.O. No. 38 of 1951)

THE LAW CONCERNING THE CONTROL OF INSURANCE SOLICITING 139

Article 9. (Repealed by M.O.F.O. No. 38 of 1951)

(Certificate of status of life insurance solicitor)

Article 10. The life insurance company concerned shall deliver to each life insurance solicitor a certificate of his status.

(Revised by M.O.F.O. No. 38 of 1951)

(Date from which the total amount of premiums is calculated)

Article 11. The total amount of premiums provided in paragraph 2 of Article 17 of the Law shall be calculated from the enforcement date of the Law.

(Form of certificate for examination)

Article 12. The certificate provided in Article 19 of the Law shall be in the form attached hereto; provided that, in the case where examination under Article 19 of the Law is held in conjunction with examination under Article 8 of the Insurance Business Law (Law No. 41 of 1939), the certificate shall be in the form attached to the Enforcement Regulations of the Insurance Business Law (Ministry of Agriculture and Commerce Ordinance No. 29 of 1912).

(Revised by M.O.F.O. No. 55 of 1954)

(N.B.)

1. The translation of various forms referred to in Articles 1, 7 and 12 is omitted.
2. The Ministry of Finance Ordinance No. 3 of 1981 relates only to the revision of the form referred to in Article 12.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

THE STATUTES OF THE REPUBLIC —
OF SINGAPORE : INSURANCE ACT

Subsidiary

Insurance
agents and
brokers.
11/86.

32.—(1) No person shall without the approval of the Authority carry on insurance business in Singapore as insurance agent for an insurer not entitled under this Act to carry on the business in question in Singapore; and a person contravening this subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 increased by a sum not exceeding \$1,000 for every day on which he is proved to have done so, or to imprisonment for a term not exceeding 2 years or to both.

(2) Subject to subsections (3) and (4), no Singapore insurance broker shall in the course of his business as such negotiate any contract of insurance with an insurer (whether directly or through an insurance agent), except with a Singapore insurer acting in the course of his business as such, nor shall any person in Singapore solicit insurance business for an insurer not entitled to carry on that business in Singapore; and a person contravening this subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

(3) The references in subsection (2) to a contract of insurance and to insurance business shall not apply to

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reinsurance or business relating to risks outside Singapore or such other risks as may be prescribed.

(4) Where in any particular case the Authority is satisfied that, by reason of the exceptional nature of the risk or other exceptional circumstances, it is not reasonably practicable to effect an insurance for that case with a Singapore insurer acting in the course of his business as such, the Authority may permit any insurance broker to negotiate the insurance with such insurer as the broker sees fit and also, if in the opinion of the Authority the case requires it, to effect the insurance and receive the premium in Singapore on behalf of the insurer.

(5) The Authority may inspect books and records kept by any Singapore insurance agent and Singapore insurance broker and may for this purpose enter any premises at all reasonable times.

(6) Sections 24 and 31 shall apply in relation to Singapore insurance agents and to Singapore insurance brokers as they apply in relation to Singapore insurers. [19

33.—(1) The Authority may by order prohibit any person from carrying on business as insurance agent or insurance broker in Singapore or from taking part directly or indirectly in the management of any insurance agent or broker in Singapore where the person has been convicted of an offence involving fraud, dishonesty, or moral turpitude or the Authority is satisfied that the person has been involved in any activity prejudicial to the public interest.

Authority may prohibit insurance agents and brokers from carrying on business. 11/86.

(2) Any person aggrieved by any order of the Authority under subsection (1) may appeal to the High Court.

(3) Any person who fails to comply with an order of the Authority made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both and in the case of a continuing offence to a further fine of \$1,000 for every day during which the offence continues after conviction. [19A

34.—(1) Section 3 shall not prevent general business being carried on in Singapore by an individual if he carries it on as a member of an association of individual underwriters established outside Singapore and for the time being approved for the purposes of this section by the Authority, and if the conditions of this section are complied with.

Provision for members of associations of underwriters to carry on general business. 22/73 11/86.

(2) The Authority shall not approve an association for the purposes of this section unless it is organised on the system known as Lloyd's, that is to say, a system whereby every underwriting member of a syndicate of the association becomes liable for a separate part of the sum secured by every policy subscribed to by that syndicate, limited or proportionate to the whole sum thereby secured.

(3) Subsection (1) shall not authorise an individual to carry on insurance business in Singapore as a member of any association, unless there are one or more persons resident in Singapore who are authorised to accept service of notices and legal process on behalf of members of the association, being persons nominated for that purpose by the association; and the association shall notify the Authority in writing of any such nomination and of any person ceasing to be nominated.

11/86.

(4) Subsection (1) shall not authorise an individual to carry on insurance business in Singapore unless the association makes and maintains with the Authority the deposit required by this section; and any such deposit may be applied by the Authority in meeting claims against members of the association in respect of Singapore policies.

(5) The deposit required by this section from an association shall be such as is mentioned in the Second Schedule, and that Schedule shall have effect in relation thereto.

11/86.

(6) After the end of 6 months from the commencement of this Act, this section shall not authorise a person to carry on business as a Singapore insurance agent for any individual, or in the course of a business as Singapore insurance broker to negotiate insurances with any individual, except under the authority of a licence issued by the Authority or in respect of any risk for which the broker has been permitted under section 32 to negotiate with any insurer; and for each calendar year in which a person acts under the authority of such a licence, he shall before the end of June in the following year lodge with the Authority a statement in the prescribed form, signed by him or on his behalf and giving the prescribed information as to his receipts and payments in connection with business done under that authority.

(7) Where a person fails to lodge a statement as required by subsection (6), he shall be guilty of an offence and shall



be liable on conviction to a fine not exceeding \$10,000 and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

(8) The Authority shall not be required to consider an application for a licence under subsection (6) unless it is satisfied — ^{22/73}

- (a) that the person applying for a licence to carry on business as a Singapore insurance agent for any individual has a surplus of assets over liabilities of not less than \$100,000 or such greater amount as may be prescribed; and
- (b) that the person applying for a licence to carry on business as Singapore insurance broker in negotiating insurances with any individual has furnished a certificate of solvency signed by the applicant's auditor and has a professional indemnity insurance policy of a value of not less than \$500,000 or such greater amount as the Authority may specify.

(9) In granting a licence under subsection (6) the Authority may impose such conditions as it thinks fit and may at any time add to, vary or revoke such conditions. ^{22/73}

(10) The Authority may cancel the licence of an insurance agent or broker issued under subsection (6) if it is satisfied that — ^{11/86.}

- (a) the agent or broker has not commenced business within 12 months after being licensed;
- (b) the agent or broker has ceased to carry on the business for which it is licensed;
- (c) there exists a ground on which the Authority would not be required to consider an application for a licence by the agent or broker under subsection (8);
- (d) the agent or broker proposes to make, or has made, any composition or arrangement with its creditors or has gone into liquidation or has been wound up or otherwise dissolved;
- (e) the agent or broker is carrying on its business in a manner likely to be detrimental to the interests of policy owners or the public;

- (f) the agent or broker is unable to meet its obligations;
- (g) the agent or broker has contravened any provision of this Act or any regulations made thereunder or any condition of its licence;
- (h) any of the officers of the agent or broker holding a managerial or executive position has been convicted of any offence under this Act; or
- (i) the agent or broker has furnished false, misleading or inaccurate information, or has concealed or failed to disclose material facts in its application for a licence.

11/86. (11) Any person who carries on business as a Singapore insurance agent for any individual or as a Singapore insurance broker in negotiating insurances with any individual without a valid licence under subsection (6) or who fails to comply with any of the conditions of his licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both and in the case of a continuing offence to a further fine of \$1,000 for every day during which the offence continues after conviction.

11/86. (12) Every insurance agent or broker licensed under subsection (6) shall pay to the Authority such annual fees as may be prescribed.

11/86. (13) The Authority may prescribe different annual fees for insurance agents and brokers licensed under subsection (6).

(14) In every year there shall be furnished to the Authority on behalf of any association of underwriters of which any members carried on business as Singapore insurers in the preceding year by virtue of this section —

- (a) a certificate, signed by the chairman or other presiding officer of the association and by or on behalf of the Minister or other public authority as has the administration of the law relating to insurance in the country in which the association is constituted, whether or not those members of the association have in respect of that preceding year complied with that law so far as applicable to them;

- (b) a certified copy of such returns for the preceding year and relating to insurance business carried on by those members of the association as are required by that law to be furnished to the Minister or authority; and
- (c) the latest annual list of members of the association and of its committee or other governing body.

[20

35. Nothing in this Part shall operate to invalidate any policy. [21 Saving for validity of policies.

PART III

RETURNS, INSPECTIONS AND INVESTIGATIONS,
WINDING UP AND TRANSFERS OF BUSINESS*Returns*

36.—(1) A registered insurer shall prepare such statements of account and other statements and in such form and manner as may be prescribed and lodge them with the Authority. Annual account and audit. 11/86.

(2) A registered insurer shall cause to be kept such books and records as will sufficiently explain the transactions and financial position of the insurer in Singapore and enable the insurer to comply with the requirements of this section and section 37, and shall cause those books and records to be kept in such manner as to enable them to be conveniently and properly audited.

(3) A registered insurer shall have its accounts audited for each accounting period for which statements of account are prepared in accordance with regulations prescribed under subsection (1).

(4) No person shall act as auditor for any registered insurer unless —

- (a) he has a place of business in Singapore;
- (b) he is approved under section 9 of the Companies Act as a company auditor for the purposes of that Act; and Cap. 50.
- (c) he has the approval of the Authority.

(5) An auditor shall not be approved by the Authority as an auditor for registered insurers unless he is able to comply

คำพิพากษาฎีกาที่ ๕๕๘/๒๕๐๕

แพ่ง ประกันชีวิต

พ.ร.บ. ประกันชีวิต

สมาคม พ. ได้ดำเนินกิจการฌาปนกิจสงเคราะห์ โดยมีข้อตกลงว่าสมาคมจะใช้เงินช่วยสงเคราะห์ฌาปนกิจให้แก่ทายาทของสมาชิกที่ถึงแก่กรรม ตามจำนวนและเงื่อนไขที่ทางสมาคมได้กำหนดไว้ และผู้เข้าเป็นสมาชิกก็ต้องชำระเงินฝากช่วยสงเคราะห์ฌาปนกิจให้แก่สมาคมตามจำนวนที่สมาคมกำหนดไว้ ซึ่งเห็นได้ว่าเป็นเงินค่าตอบแทนข้อตกลงของสมาคมนี้ ทั้งนี้โดยอาศัยเงื่อนไขความมรณะของบุคคลผู้เป็นสมาชิกนั่นเอง ข้อตกลงเช่นนี้เข้าลักษณะเป็นสัญญาประกันชีวิตตามประมวลกฎหมายแพ่งและพาณิชย์ มาตรา ๘๖๑ และมาตรา ๘๘๔

เมื่อกิจการฌาปนกิจสงเคราะห์ของสมาคม พ. เป็นการรับประกันชีวิต การดำเนินกิจการดังกล่าวก็ต้องได้รับใบอนุญาตประกอบธุรกิจประกันชีวิตจากรัฐมนตรี

สมาคม พ. ประกอบธุรกิจประกันชีวิตโดยมิได้รับอนุญาต โดยมีบริษัท บ. เป็นตัวแทนของสมาคมดำเนินการจัดหาสมาชิก จำเลยซึ่งเป็นพนักงานของบริษัท บ. ได้ทำการชักชวนแนะนำบุคคลให้เข้าเป็นสมาชิกของสมาคม พ. เท่ากับเป็นการกระทำเพื่อให้บุคคลทำสัญญาประกันชีวิตกับสมาคมซึ่งมิได้รับใบอนุญาตให้ประกอบธุรกิจประกันชีวิต จำเลยย่อมมีความผิดตามพระราชบัญญัติประกันชีวิต พ.ศ. ๒๕๑๐ มาตรา ๗๒, ๗๕.

(ฎีกาย่อ)

คำพิพากษาศาลฎีกาที่ ๑๑๐๖/๒๕๑๖ (ประชุมใหญ่)

(พนักงานอัยการจังหวัดราชบุรี โจทก์ สมาคมฌาปนกิจ
อำเภอคำเนินสะทวัก โดยนายนาม วิชิตชาญ นายกสมาคม ที่ ๑,
นายนาม วิชิตชาญ ที่ ๒, นายเข้ม มหาคไทย ที่ ๓, นายเชวง
อนันตศิริ ที่ ๔, นายเต็ม อินทวงศ์ ที่ ๕, นายสุข แซ่เจ็ง ที่ ๖,
นายสมพงศ์ วงศ์ประเสริฐ ที่ ๗, นายมนู จิตรานนท์ ที่ ๘ จำเลย)
แพ่ง ประกันภัย

พ.ร.บ. ประกันชีวิต**พ.ร.บ. ควบคุมกิจการค้าขาย ฯ**

การที่สมาชิกของสมาคมต้องชำระค่าบำรุงแก่สมาคมเป็นรายปี
และต้องชำระเงินช่วยการกุศลแรกเข้า กับต้องชำระเงินค่าช่วยในการ
ทำศพให้แก่สมาชิกที่ถึงแก่กรรม เมื่อสมาชิกถึงแก่กรรมทายาทมีสิทธิ
ได้รับเงินสงเคราะห์จากสมาคม ตามจำนวนสมาชิกที่มีอยู่ทั้งหมดใน
วันที่สมาชิกถึงแก่กรรม โดยสมาคมหักไว้ร้อยละ ๒๐ เช่นนี้ เงินที่
สมาชิกชำระมีลักษณะเป็นเบี้ยประกันภัย และสมาคมจ่ายเงินให้โดย
อาศัยความมรณะของสมาชิก การดำเนินกิจการของสมาคมจึงมี
ลักษณะเป็นการประกันภัย.

โจทก์ฟ้องว่า เมื่อระหว่างวันที่ ๓๐ สิงหาคม ๒๕๐๖ เวลา
กลางวันติดต่อกันไปจนถึงวันที่ ๑๑ พฤศจิกายน ๒๕๑๓ ทั้งเวลากลางวัน

คำพิพากษาฎีกาที่ ๑๘๒๔/๒๕๑๖ (ประชุมใหญ่)

พ.ร.บ. ประกันชีวิต

วิธีพิจารณาความอาญา บรรยายฟ้อง ฟ้องเคลือบคลุม

ตาม พ.ร.บ. ประกันชีวิต พ.ศ. ๒๕๑๐ มาตรา ๗ วรรคแรก
 สมาคมจะประกอบธุรกิจประกันชีวิตไม่ได้ และตามมาตรา ๗๒ กฎ
 หมายอนุญาตให้ชักชวนแนะนำให้ผู้อื่นทำสัญญาประกันชีวิตกับบริษัท
 จากที่ที่ได้รับใบอนุญาตประกอบธุรกิจประกันชีวิตแล้วได้ แต่จะ
 ชักชวนแนะนำให้ทำสัญญาประกันชีวิตกับบุคคลอื่นรวมถึงสมาคมด้วย
 ไม่ได้ ฉะนั้น การที่โจทก์ฟ้องว่าจำเลยฝ่าฝืนมาตรา ๗๒ แห่ง พ.ร.บ.
 นี้โดยบรรยายฟ้องว่า จำเลยชักชวนแนะนำให้บุคคลอื่นทำสัญญาประ
 กันชีวิตกับสมาคมส่งเสริมกิจการ แม้จะมีได้บรรยายว่าสมาคมดังกล่าว
 ไม่ได้รับอนุญาตประกอบธุรกิจประกันชีวิต แต่กลับไปกล่าวว่จำเลย
 ไม่ได้รับอนุญาตประกอบธุรกิจประกันชีวิตตามกฎหมาย ทั้งนี้ ก็เป็น
 ฟ้องที่สมบูรณ์.

ศูนย์วิทยทรัพยากร
 จุฬาลงกรณ์มหาวิทยาลัย

คำพิพากษาฎีกาที่ ๒๒๑๘/๒๕๑๖ (ประชุมใหญ่)

แพ่ง ประกันชีวิต

พ.ร.บ. ประกันชีวิต

สัญญาซึ่งมีข้อตกลงว่าทางสมาคมจะจ่ายเงินให้แก่ทายาทของสมาชิกเมื่อสมาชิกตาย ฝ่ายสมาชิกก็ตกลงจะส่งเงินฝากสงเคราะห์ตามปกติให้แก่สมาคม โดยวิธีการปฏิบัติเกี่ยวกับการส่งเบี้ยประกันเพื่อประกันชีวิตไว้กับสมาคม เช่นนี้ สัญญาดังกล่าวเข้าลักษณะสัญญาประกันชีวิต การประกอบธุรกิจของสมาคมจึงเป็นการฝ่าฝืน พ.ร.บ. ประกันชีวิต พ.ศ. ๒๕๑๐ มาตรา ๑๒

การกระทำที่จะเป็นความผิดตาม พ.ร.บ. ประกันชีวิต พ.ศ. ๒๕๑๐ มาตรา ๕๘ วรรค ๑ ต้องเป็นกรณีที่เกี่ยวข้องกับการเป็นตัวแทนประกันให้บริษัทจำกัดที่ได้รับใบอนุญาตประกอบธุรกิจประกันชีวิตเท่านั้น การเป็นตัวแทนประกันชีวิตให้สมาคมหาเป็นความผิดตามบทบัญญัติดังกล่าวไม่.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย



(ฎีกาย่อ)

คำพิพากษาฎีกาที่ ๑๗๔๒/๒๕๒๐

(บริษัทโรมีโอ จำกัด โจทก์ บริษัทลำชาประกันภัยและคลัง
สินค้า จำกัด จำเลย)

แพ่ง ประกันภัย ส่วนได้เสีย (ม. ๘๖๓)

ประกันภัย ค่าเสียหาย (ม. ๘๗๕)

วิธีพิจารณาความอาญา พนักงานสอบสวน (ม. ๑๘)

พระราชบัญญัติ ประกันวินาศภัยฯ

โจทก์ครอบครองค้ำของผู้อื่นในฐานะผู้อาศัย โจทก์ไม่มีส่วนได้
เสียที่จะเอาประกันภัยค้ำนั้นได้ตาม ม. ๘๖๓ ไม่มีอำนาจฟ้องเรียกค่า
สินไหมทดแทนเมื่อไฟไหม้ค้ำ มีแต่สิทธิเรียกค่าสินไหมทดแทนเครื่อง
ตกแต่งของโจทก์ที่เอาประกันภัยไว้

พนักงานสอบสวนผู้รับผิดชอบ พ.ร.บ. ประกันวินาศภัย
พ.ศ. ๒๕๑๐ ม. ๓๑ ที่จะแจ้งเหตุสงสัยให้นายทะเบียนออกคำสั่งให้บริษัท
ทวงจ่ายเงินตามกรมธรรม์ประกันภัย ไม่หมายความว่าต้องร้องผู้ค้ำซึ่ง
รักษาการแทนผู้ค้ำกับการสำรวจและแจ้งไปยังนายทะเบียนในฐานะ
รักษาการแทนผู้ค้ำกับการสำรวจ มิได้เป็นพนักงานสอบสวนผู้รับผิดชอบ
ชอบ การแจ้งและคำสั่งของนายทะเบียนไม่มีผลให้บริษัททวงจ่ายค่า
สินไหมทดแทน

(ฎีกาย่อ)

คำพิพากษาฎีกาที่ ๓๓/๒๕๒๑

(นายประสิทธิ์ โลทยากุล โจทก์ บริษัทสินสวัสดิ์ประกันภัย จำกัด
จำเลย)

พระราชบัญญัติ ประกันวินาศภัย พ.ศ. ๒๕๑๐

ผู้มีส่วนได้เสียมีสิทธิตรวจสอบสถานะเบียนของบริษัทรับประกันวินาศ-
ภัยได้เฉพาะรายการที่ตนเกี่ยวข้องตาม พ.ร.บ. ประกันวินาศภัย พ.ศ. ๒๕๑๐
ม. ๓๔ ผู้ถือหุ้นขอตรวจสอบสถานะเบียนบัญชีเกี่ยวกับธุรกิจของบริษัทโดยไม่
แจ้งรายการที่ตนมีส่วนได้เสีย ทั้งนี้ ไม่เป็นกรณีที่จะอ้างว่าถูกบริษัทโต้แย้ง
สิทธิ



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

๒๒๗๕

(ฎีกาย่อ)

คำพิพากษาฎีกาที่ ๔๒๑๑,๔๒๑๒/๒๕๒๔

(นายก ยศไชติ กับพวก โจทก์ นายสายยนต์ โสตา กับพวก
จำเลย บ.จ.ก. ชานนท์ จำเลยร่วม)

แห่ง นิติบุคคล วัตถุประสงค์ (ม. ๖๕)
 โมฆะ (ม. ๑๑๓)
 ประกันภัย (ม. ๙๖๑)

พระราชบัญญัติ ประกันวินาศภัย พ.ศ. ๒๕๑๐

บริษัทจำกัดซึ่งไม่มีวัตถุประสงค์ในการรับประกันวินาศภัย แต่
ได้รับประกันวินาศภัยไว้ เมื่อได้รับเบี้ยประกันภัยอันเป็นผลประโยชน์
ตอบแทนจากผู้เอาประกันภัย บริษัทจำกัดนั้นจะปฏิเสธว่าเป็นเรื่องนอกวัตถุประสงค์
ประสงค์ของตนเพื่อให้พ้นความรับผิดที่จะต้องชดใช้ค่าเสียหายตามสัญญา
ประกันภัยหาได้ไม่

การที่ผู้รับประกันภัยได้รับประกันวินาศภัยไว้จากผู้เอาประกันภัย
โดยไม่ได้รับอนุญาตจากรัฐมนตรี ให้ประกอบกิจการประกันวินาศภัย
สัญญาประกันภัยจะเป็น โมฆะก็ต่อเมื่อผู้เอาประกันภัย ซึ่งเป็นคู่สัญญาได้
ทราบถึงการไม่ได้รับอนุญาตนั้น เมื่อ ไม่ปรากฏว่าผู้เอาประกันภัยได้
ทราบความดังกล่าว ผู้รับประกันภัยจึงต้องรับผิดตามสัญญาประกันภัย

จุฬาลงกรณ์มหาวิทยาลัย

๗๑๓

(ฎีกาย่อ)

คำพิพากษาฎีกาที่ ๑๒๕๔ / ๒๕๓๑

(นายอภิชาต กิตติสุวรรณ โจทก์ บ. อเมริกันอินเตอร์เนชันแนล แอสซิวเร้นส์ จำกัด จำเลย)

แพ่ง	นิติกรรม	(ม. ๑๑๒)
	แสดงเจตนา	ตีความ (ม. ๑๓๒)
	ตัวแทน	(ม. ๗๕๗)
		ตัวการรับผิดชอบ (ม. ๘๒๐)
	ประกันภัย	(ม. ๘๖๑)
		ประกันชีวิต (ม. ๘๘๕)
พระราชบัญญัติ	ประกันชีวิต พ.ศ. ๒๕๑๐	(ม. ๓, ๕, ๖๑)

ในกรณีที่ผู้เอาประกันชีวิตได้ยื่นใบสมัครหรือทำคำเสนอเพื่อทำประกันชีวิตกับตัวแทนของผู้รับประกันชีวิตนั้น จะต้องนำเอาบทบัญญัติพระราชบัญญัติประกันชีวิตมาประกอบการวินิจฉัยคดีด้วย ซึ่งหากไม่ปรากฏข้อเท็จจริงว่า ผู้รับประกันชีวิตมอบอำนาจเป็นหนังสือให้ตัวแทนของผู้รับประกันชีวิตทำสัญญาประกันชีวิตได้ในนามของผู้รับประกันชีวิตตามที่พระราชบัญญัติประกันชีวิต พ.ศ. ๒๕๑๐ มาตรา ๖๑ บัญญัติไว้ ถือได้ว่าตัวแทนของผู้รับประกันชีวิตมีอำนาจเพียงรับแบบฟอร์มใบสมัครขอประกันชีวิต และรับเบี้ยประกันล่วงหน้าส่งไปให้ผู้รับประกันชีวิตพิจารณาก่อนเท่านั้น และต้องมีการสนองรับคำเสนอจากผู้รับประกันชีวิตโดยตรง สัญญาประกันชีวิตจึงเกิดขึ้น

๗๑๔

โจทก์ฟ้องว่า โจทก์เป็นผู้รับประโยชน์ตามสัญญาประกันชีวิต ที่ทำไว้กับจำเลยสองฉบับ จำเลยจ่ายเงินให้โจทก์เฉพาะฉบับแรก ส่วน ฉบับหลังไม่จ่าย ขอให้ศาลพิพากษาบังคับ จำเลยให้การว่า โจทก์ไม่มี อำนาจฟ้อง เพราะสัญญาประกันชีวิตฉบับหลังยังไม่เกิดขึ้น ขอให้ยก ฟ้อง ศาลชั้นต้นพิพากษาให้จำเลยจ่ายเงินตามฟ้อง จำเลยอุทธรณ์ ศาล อุทธรณ์พิพากษากลับให้ยกฟ้อง โจทก์ฎีกา

ศาลฎีกาวินิจฉัยว่า "ข้อเท็จจริงฟังได้ว่า จำเลยเป็นบริษัทจำกัด มีวัตถุประสงค์ในการรับประกันชีวิต เมื่อปี พ.ศ. ๒๕๒๓ นายอภิชาติ กิตติสุวรรณ พี่ชายโจทก์ได้ทำสัญญาประกันชีวิตไว้กับจำเลย แบบตลอดชีพ และแบบอุบัติเหตุในวงเงินประกัน ๑๐๐,๐๐๐ บาท ตามกรมธรรม์ลงวันที่ ๓ กันยายน ๒๕๒๓ ระบุให้โจทก์เป็นผู้รับประโยชน์ หลังจากนั้น คือเมื่อวันที่ ๒๗ มีนาคม ๒๕๒๔ นายอภิชาติได้ยื่นใบสมัครเพื่อทำประกันชีวิต เอกสารหมายเลข ๑ กับตัวแทนของจำเลยที่จังหวัดนครราชสีมาแบบตลอดชีพและแบบอุบัติเหตุอีกในวงเงินประกัน ๕๐๐,๐๐๐ บาท ระบุให้โจทก์เป็นผู้รับประโยชน์เช่นเดียวกัน ในการยื่นใบสมัครครั้งหลังนี้ นายอภิชาติได้ชำระ เบี้ยประกันงวดแรกให้แก่ตัวแทนของจำเลยกับได้รับการตรวจสุขภาพของ แพทย์แล้ว ต่อมาวันที่ ๑๔ พฤษภาคม ๒๕๒๔ นายอภิชาติถึงแก่ความตาย ด้วยอุบัติเหตุรถยนต์ชนกัน โดยจำเลยยังไม่ได้ออกกรมธรรม์ให้ โจทก์ได้ขอ ให้จำเลยจ่ายเงินให้แก่โจทก์ตามสัญญา จำเลยคงจ่ายเงินให้แก่โจทก์ตาม กรมธรรม์ฉบับแรก ลงวันที่ ๓ กันยายน ๒๕๒๓ จำนวน ๒๐๐,๐๐๐ บาท เท่านั้น ส่วนที่นายอภิชาติยื่นขอสมัครประกันชีวิตครั้งหลัง เมื่อวันที่ ๒๗ มีนาคม ๒๕๒๔ ซึ่งโจทก์อ้างว่ามีสิทธิได้รับเงินจำนวน ๑,๐๐๐,๐๐๐ บาท จำเลยไม่ชำระ ปัญหาที่จะวินิจฉัยในเบื้องต้นมีว่า โจทก์มีสิทธิฟ้องให้

๗๑๕

จำเลยรับผิดชอบหรือไม่

เห็นว่า การขอประกันชีวิตรายนี้ นายอภิชาติ กิตติสุวรรณ ได้ยื่นใบสมัครหรือทำคำเสนอเพื่อทำประกันชีวิตกับตัวแทนของจำเลยที่จังหวัดนครราชสีมา ในกรณีเช่นนี้ ต้องนำพระราชบัญญัติประกันชีวิต พ.ศ. ๒๕๑๐ มาประกอบการวินิจฉัยคดีด้วย และได้พิเคราะห์แล้ว สำหรับกรณีนี้ ข้อเท็จจริงตามที่จำเลยและโจทก์นำสืบไม่ได้ความว่า จำเลยได้มอบอำนาจเป็นหนังสือให้ตัวแทนทำสัญญาประกันชีวิตในนามของจำเลยดังที่พระราชบัญญัติประกันชีวิต พ.ศ. ๒๕๑๐ มาตรา ๖๑ บัญญัติไว้ ใบสมัครเพื่อทำประกันชีวิตเอกสารหมายเลข ล. ๑ และใบรับเบี้ยประกันงวดแรก เอกสารหมายเลข จ. ๒ ก็ไม่มีข้อความให้เห็นได้เช่นนั้น กรณีดังกล่าวถือว่าตัวแทนมีอำนาจเพียงรับแบบฟอร์มใบสมัครขอประกันชีวิตและรับเงินเบี้ยประกันล่วงหน้าส่งไปให้จำเลยพิจารณาก่อนเท่านั้น การขอประกันชีวิตรายนี้จึงต้องมีการสนองรับคำเสนอจากจำเลยโดยตรง คดีนี้ ตัวโจทก์เองเบิกความไว้ชัดว่า ก่อนที่นายอภิชาติถึงแก่ความตาย จำเลยยังไม่ได้ตอบรับการขอประกันชีวิตรายนี้และยังไม่ได้ออกกรมธรรม์ให้ สัญญาประกันชีวิตระหว่างนายอภิชาติกับจำเลยจึงยังไม่เกิดและโจทก์ยังไม่อยู่ในฐานะเป็นผู้รับประโยชน์ ไม่มีสิทธิฟ้องให้จำเลยรับผิดชอบได้ ปัญหาอื่นไม่จำเป็นต้องวินิจฉัย คำพิพากษาศาลอุทธรณ์ชอบแล้ว ฎีกาโจทก์ฟังไม่ขึ้น”

พิพากษายืน

(เสรี แสงศิลป์ สุทิน นนทแก้ว อากาศ บำรุงชีพ)

จุฬาลงกรณ์มหาวิทยาลัย

ประวัติผู้เขียน



นางสาวอัญชลี อนันต์คำ เกิดเมื่อวันที่ 22 กันยายน 2502 ที่จังหวัดกาญจนบุรี
 สำเร็จการศึกษาระดับปริญญาตรีนิติศาสตร์บัณฑิต มหาวิทยาลัยรามคำแหง ปีการศึกษา 2525
 ปัจจุบัน ประกอบอาชีพรับราชการ ในตำแหน่งนิติกร ระดับ 5 กองระบบการคลัง
 สำนักงานการคลัง กรุงเทพมหานคร



ศูนย์วิทยทรัพยากร
 จุฬาลงกรณ์มหาวิทยาลัย