

Press Release

A Law Reform Commission report which contains, among other things, proposals for more safeguards for insurance policy-holders against abuse is published today (Monday).

The first part of the Report on Laws on Insurance is concerned with the disclosure of material facts by the insured person to the insurer while the second part explores the feasibility of a system of control on the activities of insurance brokers and agents.

Explaining the recommendations, the Secretary to the Commission, Mr Bertrand de Speville, said that they were the results of some four years' work by a sub-committee which included members of the insurance industry under the chairmanship of Professor Peter Willoughby and by the Commission itself.

On the disclosure of material facts, Mr de Speville said the existing law on non-disclosure provided that a person seeking insurance must disclose all 'material facts' to the insurer.

"A material fact is one which a prudent insurer would consider material. ^{T1} It may be that the person applying for insurance innocently omits to disclose a fact which the insurer would regard as material," he pointed out.

In that case, he said, the insurer would nevertheless be entitled to avoid the insurance contract.

Mr de Speville suggested that the rule could result in injustice where the non-disclosure was wholly innocent:

"The Commission therefore recommended that a contract of insurance should not be rendered voidable or unenforceable by reason of non-disclosure of a fact unless that fact was material to the particular contract of insurance and the insured knew, or a reasonable man in his circumstances ought to have known, that the fact not disclosed was material to the insurer in relation to the particular contract of insurance.

Related to non-disclosure was the question of misrepresentation, Mr de Speville pointed out that the insurer could avoid the policy where a material fact had been misrepresented by the insured person, whether or not the insured was aware that the fact was material to the insurer.

"The Commission has proposed a similar reform to that put forward in relation to non-disclosure," he said.

Where proceedings arose in court in respect of a difference or dispute arising out of a contract of insurance, the Commission recommends that the courts should be empowered to disregard a failure by an insured to

observe or perform a term or condition of the contract of insurance if it is just and equitable in all the circumstances so to do and if the insurer has not been materially prejudiced by the failure.

The Commission stresses the language difficulties which may arise in relation to insurance contracts, which are generally produced only in English. To ensure that adequate notice is given to people taking out or renewing insurance, the Commission recommends that all proposal forms and renewal notices should bear a printed warning in both English and Chinese to the effect that a failure to disclose all facts which the insurer may think relevant to his assessment of the risk may lead to avoidance of the policy.

The Commission further recommends that a Chinese summary of the insurance cover should be provided in every case and, wherever practicable, the policy holder should be supplied with a copy in English and Chinese of any warranty on which the insurer intends to rely. Any exemptions in the policy should be drawn specifically to the attention of the policy holder by providing him with details of the exemptions in both languages.

Turning to the second part of the Commission's report, Mr de Speville said that there was some confusion in the public mind in Hong Kong as to the distinction between insurance brokers and insurance agents. He explained that the essential difference was that brokers generally acted as agents of the person seeking insurance while insurance agents acted as agents of the insurer. The Commission had clarified this definition of each of these types of insurance intermediary.

The Commission points out in its report that there is at present no statutory regulation of the activities of brokers or agents, though insurers themselves are regulated by the Insurance Companies Ordinance.

"While there have been few complaints from the public, the Commission nevertheless believe that the public does not always receive the service which it is entitled to expect from the insurance industry and that there are inadequate safeguards against abuse of the system," Mr de Speville said.

The Commission recommends that anyone seeking to carry on business as a broker should be required to register with the Insurance Authority. Broking associations would also be entitled to apply for registration, and membership of a registered broking association would automatically satisfy the requirements for insurance registration.

Detailed provisions are suggested for the registration of broking companies or partnerships, modelled in part on measures contained in the Companies Ordinance.

"If this proposal is implemented, it would then become an offence for any unregistered person to carry on business as a broker. Power would be given to the Insurance Authority to cancel or suspend registration in appropriate cases," Mr de Speville said.

The Commission recommends that an insurer should be held to be responsible for the conduct of its insurance agent where that conduct is relied on in good faith by the insured in relation to any matter relating to insurance, whether or not the agent acted within the scope of his authority.

Insurers would be required to keep a register of their agents which would be open to public inspection. As with brokers, it should be an offence for a person falsely to hold himself out as an insurance agent.

Furthermore, protection for the insureds would be extended to make an insurer liable for the conduct of any person who arranges insurance with the insurer for reward for a policy holder where the insurer has by his subsequent conduct effectively accepted the person arranging the policy as his agent. The fact that the insurer has issued a policy would be treated as prima facie evidence that the insurer has ratified the conduct of the "agent".

The Commission considers that insurance companies should be encouraged to establish a code of practice for the supervision of the activities of their agents and training programmes and facilities should be provided. The report concludes with proposals which deal with the situation than one insurance company and a dispute may arise as to which company is liable.

Mr de Speville said it was now for the Government to decide whether to implement the Commission's recommendation. The subject matter of the report was complex and he did not expect that the Government would reach a decision on the proposals for some months.

" The report is the result of careful study and consultation with both the insurance industry and consumer interests. I think it is important that members of the public should be given an adequate opportunity express their views upon it," he said.

Views on the report may be sent to the Secretary for Economic Services, at Central Government Offices.