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BULLETIN NO.30February 1973MEETINGS - A NEW VENUE

It has been necessary to change the venue for the Association's meetings since Aldermary House is no longer available for use by other than tenants. There has also been occasion to make one or two minor changes to the topics for the remainder of this session, and the revised programme, together with venues, is as follows:

<u>DATE</u>	<u>TOPIC</u>	<u>SPEAKER</u>	<u>VENUE</u>
21 February	Pollution of the environment and insurance	T.W.Marriott	Training Centre, Chartered Insurance Inst., 20 Aldermanbury, E.C.2.
21 March	The new corporate tax system and the implications for insurance companies	Iain Stitt	} Council Chamber, The Law Society, 113 Chancery Lane, W.C.2.
11 April	The Scott Report	Sir Hilary Scott and R.W.Abbott, a member of the Scott Committee	
25 April	Social security law in Germany	Professor Hans Möller	
23 May	Comparative study of law of contract and trust in the EEC (Members of BIICL will be invited to attend.)	K.M.Clark	

- All meetings will commence at 6 p.m. Unfortunately it will not be possible to serve coffee beforehand.

The Association's annual luncheon will take place at the Law Society on Monday 18 June.

REX WYETH

We offer our congratulations to Rex Wyeth, a Committee member and founder member of the Association, on his appointment as a part-time Recorder of the Crown Court, South-Eastern Circuit.

1974 AIDA CONGRESS

Papers have now been prepared on the two themes, namely 'The accumulation of claims payments, recourse and subrogation in private and state insurance' and 'Insurance and acts of violence against a community, affecting persons or property' by Hugh Cockerell and Professor E.R.H.Ivamy respectively. It is planned to publish these submissions in a later Bulletin.

OVERSEAS SEMINARS

Sixteen members attended the seminar held at Cologne on 16 - 19 November 1972 and reported that the exchange of views with some of our friends in Germany had proved extremely useful. These seminars are gaining in popularity, and discussions are being held at present with our opposite numbers in Holland with a view to arranging a seminar there some time this year. Further details will be announced as soon as possible.

CIVIL LIABILITY FOR PERSONAL INJURY

The Royal Commission on civil liability and compensation for personal injury has recently been set up under the Chairmanship of Lord Pearson. The Commission's terms of reference are:

To consider to what extent, in what circumstances and by what means compensation should be payable in respect of death or personal injury (including ante-natal injury) suffered by any person:

- (a) in the course of employment;
- (b) through the use of a motor-vehicle or other means of transport;
- (c) through the manufacture, supply or use of goods or services;
- (d) on premises belonging to or occupied by another; or
- (e) otherwise through the act or omission of another where compensation under the present law is recoverable only on proof of fault or under the rules of strict liability,

all this having regard to the cost and other implications of the arrangements for the recovery of compensation, whether by way of compulsory insurance or otherwise.

CIVIL LIABILITY FOR PERSONAL INJURY (cont'd.)

In setting up the Commission the Prime Minister said that the Government had been considering proposals made from time to time, which were now particularly relevant in the light of the Report of the Robens Committee on Safety and Health at Work and in connection with the recent concern over the thalidomide cases, that there should be an inquiry into the basis of civil liability in the United Kingdom for causing death or personal injury.

ISOLATED DEFECTS IN THE LAW

The Law Reform Committee has been considering the problem of isolated defects in the law which come to light from time to time and which ought to be remedied without delay. Discussions are to take place with the Law Reform Committee of The Law Society and thereafter it is intended to seek a joint meeting with the Law Commission. Any member of the Association who is aware of such isolated defects is invited to communicate with the Law Reform Committees of the Bar Council and the Law Society.

"STATUTES IN FORCE"

The attention of members is drawn to the publication of "Statutes in Force" which will replace the third edition of "Statutes Revised", published in 1950. The publication has been authorised by the Statute Law Committee and has been commended by the Lord Chancellor. Each Act will normally be in the form of a separate booklet which will be punched for housing in loose-leaf binders. Any Act which is repealed can readily be removed. Where in the course of time an Act becomes heavily amended, the booklet will be replaced by a new one.

A cumulative amendments booklet issued annually will list all the amendments which have not yet been incorporated in the edition. The Acts will be grouped in alphabetical sections and those who do not wish to acquire the whole work need only buy the sections in which they are interested. An explanatory booklet on the work may be obtained from H.M. Stationery Office.

THE JOURNAL OF BUSINESS LAW

Members' attention is drawn to the Journal of Business Law for July 1972 which contains an article on 'Reinsurance in English private international law' by Athene N. Monachos. The author considers, in the light of the scanty English case law, what law is applicable to reinsurance contracts between parties in different countries. She concludes that such contracts are submitted to the law chosen by the parties but that in the absence of such a choice there is a presumption in favour of the reinsured's law.

THE JOURNAL OF BUSINESS LAW (cont'd.)

Members may like to know that the paper prepared by Hugh Cockerell on 'The accumulation of claims payments, recourse and subrogation in private and state insurance', referred to in the item on the 1974 AIDA Congress, is to be published in a forthcoming issue of this Journal.

The Journal also contains a regular feature on insurance law, air transport law and sea transport law. It is a quarterly, edited by Professor Clive M. Schmitthoff, and published by Stevens and Sons Ltd., 11 New Fetter Lane, London, E.C.4. The annual subscription is £5, postage 30p.

THE INSURANCE COMPANIES BILL

The Insurance Companies Bill has now been published following First Reading in the House of Lords. The main purposes of the Bill are to amend the law relating to insurance companies so as

- (1) to raise the standards which a company must attain before it can be allowed to carry on insurance business;
- (2) to improve the security of long term policy holders (that is, principally life policy holders);
- (3) to require insurance companies more frequently to submit financial statements to the Secretary of State and to facilitate the obtaining of supplementary information from particular companies;
- (4) to re-formulate and extend the Secretary of State's powers of intervention in the conduct of the business of insurance companies and the circumstances in which he may exercise these powers so as to give greater flexibility;
- (5) to provide that no person may acquire a dominating position in relation to an insurance company if the Secretary of State considers him not to be a fit and proper person to be associated with the company; and
- (6) to provide that the Secretary of State may intervene in the conduct of the business of an insurance company on the ground of lack of fitness of any person who manages the company, or, directly or indirectly, controls its affairs without necessarily having to disclose particulars of that ground.

THE INSURANCE COMPANIES BILL (cont'd.)

The Insurance and Companies Department of the Department of Trade and Industry has issued a background note which contains the following comments.

1. The Bill is the result of a review of insurance legislation announced by the then Secretary of State for Trade and Industry in March 1971, soon after the V & G collapse. The existing Acts are the Insurance Companies Act 1958 and Part II of the Companies Act 1967. (Connected Regulations S.I. 1968 No. 1408).
2. There have been extensive consultations with the industry and other interested organisations. Account has also been taken of the Report of the V & G Tribunal (HC 133), the House of Commons Debate thereon (May 1, 1972), the Department's experience in administering the new powers given in 1967 and prospective developments in EEC.
3. The basic principle of 'freedom with publicity' is retained; the provisions in the Bill would refine and extend the existing statutory requirements and the supervisory powers as summarised below.

FINANCIAL STANDARDS

4. Power to vary (by S.I. subject to annulment) the existing statutory minima of initial share capital and free reserves (Clause 1) and the general business solvency margin (Clause 27) and to make rules regarding the valuation of assets and liabilities, e.g. to make specified categories of assets inadmissible or only partly admissible for the calculation of statutory solvency; to impose minimum standards of valuation of liabilities in long term (life) insurance (Clause 31).

PROTECTION OF LONG TERM POLICYHOLDERS

5. Records permitting identification of assets of long term funds to be required (Clause 8); these assets to be applicable only for long term business purposes; no dividend to be declared while they stand below the minimum value of liabilities according to the valuation rules (Clause 9); the proportion of surplus allocated for other purposes not to be changed significantly to the disadvantage of (with profit) policyholders without prior notice (Clause 10); power to refuse to entertain applications to authorise 'composite' operation (i.e. long term plus general insurance (Clause 3)).

THE INSURANCE COMPANIES BILL (cont'd.)

'FIT AND PROPER' PERSONS

6. The Department to be assisted in its duty to exclude unsuitable persons from positions of authority in insurance companies by the following changes: A distinction between 'controllers' and 'managers' (Clause 2); prior approval of change of control (Clause 32); new arrangements for giving persons of either category opportunity to make representations to the Department before decisive action is taken; the Department relieved of the obligation to give particulars of their objection in such cases (Clauses 21, 22 and 32).

MONITORING

7. Powers to require all companies to furnish to the Department specified information more frequently than annually (Clause 6) and information as to specified kinds of agreement or arrangement as they are concluded (Clause 7). Amended powers to require information of a particular company - replacing for insurance companies those of s.109 of the Companies Act 1967. Clause 20 would enable the Department to employ outside assistance for such investigations and Clause 11(3) would permit them to be made into any insurance company, whether its viability is suspect or not.
8. Powers to require a company carrying on long term business to make an actuarial investigation at a shorter interval than the three-year maximum (Clause 18) and to require any company to submit its normal returns sooner than six months after the end of its financial year (Clause 19).

POWERS OF INTERVENTION

9. The new powers given in the 1967 Act to intervene with a view to averting future insolvency (sections 65, 68 and 80) have been reformulated in the light of experience to give greater flexibility. Main changes are: Any of the powers to be exercisable when any one of the preconditions is present; requirements imposed on a newly authorised company no longer limited to the first five years; the precondition at present in s.80/1967 redrafted to refer to expediency for the protection of policy-holders against the risk of the company's insolvency; new preconditions referring to a change of control and to the commencement of a new class of business (Clause 11); a new supplementary power to require such action as may seem appropriate in the company's circumstances (Clause 20); redrafting of existing powers to permit greater discrimination in their application, e.g. suspension or limitation of part of the business carried on instead of the whole (Clauses 12 and 16; similar modifications in Clauses 13 - 15).
10. The Department to be given power to bring proceedings for the recovery of sums improperly applied (Clause 24).

THE INSURANCE COMPANIES BILL (cont'd.)

WINDING UP, ETC.

11. The Department to be empowered to petition for winding up an insurance company on 'just and equitable' grounds and to be entitled to be a party to the winding up of any insurance company (Clause 28) or to a petition for approval of a scheme to transfer or amalgamate long term business (Clauses 25 and 26).
12. The liquidator of a company carrying on long term business is to be required to keep that part of the business ticking over until its viability and the possibility of transfer to new control can be established (Clause 30). If necessary to wind up, the long term creditors to have first claim (after statutorily preferred and secured creditors) on the assets of the long term funds (Clause 29).

MISCELLANEA

13. Powers to make regulations as to form and content of insurance advertising (Clause 38) and as to disclosure of connections between insurance companies and brokers (Clause 39).
14. Validation of group insurance policies in which beneficiaries are not named (Clause 41).
15. Revised powers to concede modification of the general requirements in particular cases, subject to conditions (Clauses 35 - 36).
16. Penalties for new offences; increase of existing maximum fine from £200 to £400 and introduction of a daily penalty for certain offences if continued (Clause 42).
17. The changes made by the Bill to Great Britain legislation to apply to the separate N. Ireland Act (Clause 46).

The following statistics have also been issued by the Department.

COMPANIES

Approximate
number

A	Companies under supervision (Great Britain) <u>of which</u> companies incorporated overseas	760 170
B	Companies authorised since July 1967 <u>of which</u> companies incorporated overseas	160 50
C	Companies whose authorisations have been revoked or which have gone into liquidation <u>of which</u> companies incorporated overseas	80 30
D	Net increase since 1967 (B - C) <u>of which</u> companies incorporated overseas	80 20

PREMIUM INCOME

£m

E	Estimated premium income, net of reinsurance premiums paid, in U.K. of U.K. and overseas companies	1970 : 2,600 1971 : 3,000
F	Estimated net premium income of U.K. companies overseas	1970 : 1,100 1971 : 1,200
G	Total companies estimated premium income subject to supervision (E + F) (Premium income of Lloyd's, friendly societies and trade unions is additional)	1970 : 3,700 1971 : 4,200
H	(i) Total estimated long term premiums (as at G)	1970 : 1,750 1971 : 2,000
	(ii) Total estimated general business premiums (as at G)	1970 : 1,950 1971 : 2,200

INVESTMENTS

I	British insurance company investments (approx.) <u>of which</u> long term (life) business	1971 : 18,000 14,500
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USE OF D.T.I. POWERS

	1968	1969	1970	1971	1972	5 year totals
J s.61 Authorisations issued (one for each class of business)	71	57	88	59	90	365
K s.61 Applications for authorisation rejected or withdrawn	9	14	33	24	17	97
L s.65 Conditions imposed on authorisation						
(a) restriction on types of investment	7	10	24	17	34	92
(b) maintenance of assets in U.K.	67	57	82	59	90	355
(c) independent custody of assets	18	11	38	30	70	167
(d) provision of special information	62	37	84	59	89	331
M s.80 Conditions imposed subsequent to authorisation						
(a) as 65(a)	-	-	-	2	7	9
(b) as 65(b)	-	-	-	2	6	8
(c) as 65(c)	-	-	-	2	7	9
(d) limitation of premium income	-	-	-	2	7	9
(e) as 65(d)	-	-	1	1	9	11
N s.68 Notice of restriction under consideration	1	3	2	17	17	40
Restriction imposed	-	-	2	3	2	7
Restriction rescinded	-	-	1	-	-	1
O.s.109 Investigation	5	5	2	17	5	34
			<u>1967</u>			
P <u>COMPANIES WOUND UP</u>	8	2	-	3	5	30