

Phelan Hill
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

25 June 2010

Dear Phelan

HMT CP – Strengthening the administration regime for insurers

I refer to the above consultation paper and have pleasure in submitting comments on behalf of ILAG.

ILAG represents members from the Life Assurance and Wealth Management industries. ILAG members share and develop their practical experiences and expertise, applying this practitioner knowledge to the development of their businesses, both individually and collectively, for the benefit of members and their customers.

As an overall comment, we welcome the proposals to amend the rules applying to insurers in administration. We believe that these will bring a better outcome for policyholders (or other beneficiaries) in the (infrequent) event of a long term insurer being placed into administration. In respect of the individual questions in the CP we respond as follows:-

1. *Do you agree that the valuation rules set out in the Insurers (Winding Up) Rules 2001 should be applied to insurance companies in administration?*

We believe that the use of the winding up valuation rules provides a consistent framework.

2. *Do you agree that the administrator should have a duty to provide assistance to the FSCS to enable it to administer the compensation scheme?*

3. *Do you consider that the administrator should have a duty to provide assistance to the FSCS to enable it to secure continuity of long-term insurance contracts?*

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We believe that the administrator should have a duty to consult with the FSCS to ensure the appropriate treatment of policyholders. However, there is a need to ensure that the current claimants on the insurer are not treated preferentially to those remaining on contract. It would be necessary to ensure that the roles of the administrator and FSCS are recognised as being clearly separate.

4. *Do you consider that the duty to assist the FSCS in securing continuity of insurance contracts should also apply in relation to general insurance contracts?*

No comments.

5. *Do you agree that the administrator should be required to maintain contracts of long term insurance?*

The administrator should be required to maintain contracts but should have the power to amend benefits if conflicts would arise between claiming and continuing policyholders. This power should be applied through a court process. Variation of terms of a contract should not be seen as being different from reducing the value.

6. *Do you consider that an administrator should be permitted to enter into new contracts of long-term insurance where it relates to existing policyholders and arrangements in place?*

It would seem more appropriate that the administrator should not be required to permit new contracts being effected under the terms of existing contracts. It seems likely that there would be a number of potential legal issues if new contracts were permitted.

7. *Do you agree that the power to agree variation of contracts in force should be given to the administrator?*

As per 5.

8. *Do you agree that the administrator should have the same power to apply to the courts for the appointment of a Special Manager, as currently held by the liquidator?*

The proposals would appear to be unworkable if there is not a Special Manager appointed.

9. *Do you agree that the courts should be given the power to reduce the value of contracts and to appoint an independent actuary, in the event of an insurer going into administration?*

The courts should have the power to reduce benefits or otherwise vary the terms of the contract but the role of the independent actuary needs to be clarified. If the proposal is that the individual will investigate and create a scheme then this seems at odds with the approaches adopted in other circumstances where long term funds are subject to reconstruction. It would seem more appropriate that the administrator or special manager investigate and develop a scheme to be submitted to the court, and the independent actuary would then review and report to the court on the necessity for the scheme, its scope and its fairness to policyholders. In certain circumstances, it may also be appropriate to consider whether an approach similar to that applied in

Reattribution procedures would be applied (i.e. a policyholder advocate or negotiator also being involved).

Other Questions

One further area not covered in the CP but requiring clarification relates to whether the new rules are designed to over-ride the ability of firms to ring fence funds (e.g. with-profits funds). In insolvency, the barriers on a ring- fenced fund may be breached but is it intended that the same steps could apply to administration?

I hope that you find these comments useful.

Yours sincerely

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