

## **Registrar Insurance at the Insurance Council Annual General Meeting – 2009**

Mr. President, Distinguished Guest Speaker Industry Practitioners, Ladies and Gentlemen, let me thank the Insurance Council of Saint Lucia for inviting me, once again, to address you at your Annual General Meeting and wish you a most successful meeting.

At your last Annual General Meeting (AGM), I seized the opportunity to apprise you of the strategic initiatives which the Office of the Registrar of Insurance was pursuing. These initiatives were geared at enhancing the supervisory framework and strengthening the administration of Insurance within the Industry. I think it is reasonable therefore that I give you an update on where we are today with these initiatives. I will also take the opportunity to highlight areas of interest in which both my office and industry practitioners must pay closer attention to. Finally, I will revisit some issues relating to prevalent behaviors in the industry and concerns arising there from by the Registrars' office.

2008 was truly unprecedented. The international economic environment was gripped with a severe financial recession. The failure of the financial markets has been attributed to weaknesses in financial regulations and supervision and the need for more proactive, coordinated, and unified global regulatory arrangements have been advocated.

We in the Caribbean have not been spared and we have had to grapple with the effects of the global financial crisis. The region has been ravaged by the CL Financial crisis and for us in the OECS the implications for two of the largest Life Insurers have been severe and exceedingly costly. These companies were innovative, may be too much so, and their engagement with Executive Flexible Premium Annuities (EFPA) might well have triggered their demise. The governments across the region must now deal with a set of complex financial issues in an integrated manner so as to ensure that these entities continue to function as going concerns. It must also mean that a new policy agenda must now be crafted for determining among other things the right sizing of the industry and the nature and form of operations that operators must adhere to.

It must be emphasized here that the financial crisis being experienced in the OECS Insurance Industry is not due to the practice of conventional / traditional insurance business but rather because of the introduction of innovative products effectively bypassing the provisions of the Act; selling banking type products in the name of annuities and investing policyholders funds in other than permissible

securities. It is by now common knowledge that British American Insurance Company has been placed under Judicial Management and Regional Governments now expect to be guided by the report of the Judicial Managers which will be submitted to the eight courts, which have so ordered, within 60 days of the date of their court appointment. While judicial management has so far not been pursued in respect of CLICO, we continue to monitor the situation very closely, taking all necessary measures in safeguarding the interest of policyholders.

Policyholders are your clients and you must have absolute interest in them. Without proper protection of your clients the industry would not grow at a desirable rate and you will no doubt find it difficult to survive or continue as viable entities.

Against this background, permit me some time to review the strategic initiatives announced last year and which the pre-occupation of the Office of the Registrar are currently:

- **Single Regulatory Unit (SRU)**

The Cabinet has already approved the establishment of a Single Regulatory unit for the regulation and supervision of all Financial Institutions in Saint Lucia. The commencement date previously advised has not been met largely because of the extensive review of existing legislation and the introduction of new legislation and regulations in some areas and in particular the need for consultation with various stakeholders. Significant progress can now be reported and hopefully the SRU will be fully functional before the end of the current financial year.

- **Harmonized Insurance Act:**

- The office of the Registrar in Saint Lucia has been very proactive, coordinating with regional regulators and has recommended incorporation of the following provisions in the harmonized Act to prevent reoccurrence of the selling of banking type products by insurance companies, and to correct some of the deficiencies in the existing Insurance Act:
  - Defined “Annuity” to differentiate from banking products
  - Defined “affiliate” for clarity with respect to related party transactions
  - Notification of Registrar’s interest in the securities assigned to the fund
  - Enhanced power of the Registrar/Supervisor including adequate provisions for powers for inspection and intervention
  - Reciprocal exchange of information within and outside the region
  - Confidentiality and Disclosure
  - Modern standards of corporate governance
  - AML reporting requirements for insurance companies

- **Uniform Insurance Reporting Forms:**

With the enactment of the new Insurance Act and the Regulations, insurance companies will be required to submit their financial returns on new forms. Proper guidance will be provided to the industry on the requirement and completion of the new forms. These reporting forms are in keeping with the requirements of the International Financial Reporting Standards (IFRS).

- **CAIR / CARTAC Reinsurance Workshop:**

Earlier this year, 2009, Saint Lucia hosted a CAIR / CARTAC sponsored Reinsurance Workshop for the ECCU Insurance Supervisors. This programme was aimed at the purpose of reinsurance and the analysis of reinsurance treaties.

- **On-site Inspection of Insurance Companies:**

On-site inspection, whether by the supervisory authority or its representatives, is a vitally important part of the supervisory process, closely related to the on-going monitoring process. On-site inspection:

- provides information that supplements the analysis of the financial and statistical information sent by the insurance company;
- enables the supervisor to obtain information and detect problems that cannot be obtained or detected through off-site analysis i.e. analysis of financial statements;
- establishes a better relationship with managers; which is very valuable in assessing their 'fit and proper' credentials;
- enables supervisors to assess management's decision-making processes and internal controls

On-site inspection is also of great assistance in dealing with companies' problems. For example, the supervisors:

- Were able to persuade the companies management to take action to avoid current or future problems through dialogue during on-site inspection;
- Used on-site inspection as an opportunity to provide companies management with information concerning other legislation which needed to be explained in order to avoid misinterpretation.

As the office of the Registrar has limited resources (we are still a small office), we prioritise the companies to be inspected based on the analysis of the financial statements and the areas of non-compliance. In consequence, we have conducted a total of six (6) on-site inspections; four foreign insurance companies and two local general insurance companies.

**Major issues of concern arising out of Onsite Inspections include:**

- sale of amended products without approval of the Registrar.
- sale of products that are not registered with the office of the Registrar;

- absence of Internal Audit for monitoring internal control and prevention of fraud;
- Non-existent corporate governance principles; most of the companies in the region are family owned and their strategies and decision making are influenced by one person.
- **Non Compliance with the AML Act:**

Money Laundering (Prevention) Act No. 27 of 2003 defines “Financial institutions” as including an insurance company registered under the Insurance Act. This requires insurance companies to be aware of the various provisions of the Act and remain fully compliant at all times. Insurers and Intermediaries could be involved, knowingly or unknowingly, in money laundering and the financing of terrorism. This exposes them to legal, operational and reputation risks. Our onsite inspections have revealed that most companies do not have copies of the Money Laundering (Prevention) Act and are not aware of its provisions. Ignorance of the Law is not an excuse and the companies can be held accountable for allowing perpetrators to channel laundered money through their company. Industry practitioners are required to implement the provisions of the AML Act and are to provide a letter of confirmation to the office of the Registrar;
- **Disaster Management and Continuity of Operations Plan:** In the event any disaster strikes; companies shall be required to commence their operations within a minimal loss of time to meet their policyholders’ obligations. As the region is exposed to various forms of natural catastrophes this is required for any prudent service and business organization. Surprisingly, none of the companies have any documented plan for Disaster Management and Continuity of Operations. We therefore advise all insurers and intermediaries to prepare and submit the plan for our information and review at the earliest.
- **Insurance Companies (Accounts and Forms) Regulations:** Insurance companies are required to submit their financial returns every year in the manner and Forms prescribed in the “Insurance Companies (Accounts and Forms) Regulations. It has been revealed during the inspection that most branches / agencies and local accountants were not aware of the various technical provisions and generally not equipped for proper completion of the forms. Companies are encouraged to become familiar with the various provisions of the Regulations and to complete the forms in keeping with the legislation (particularly Forms B4 and B5).
- **Business Plan:**

None of the companies inspected had a written / documented strategic plan for its current and future operations.

- **Reinsurance:**  
Local branches / agencies were not aware of their companies reinsurance programme
  
- **Changes in the particulars of Registration:**  
Section 18 of the Act states:  
“where subsequent to the registration under this Act there is any change in the particulars specified in the application in registration or in the documents submitted with the application, the company shall, within 30 days of such change, notify the Registrar in writing of the change”.  
The companies were non-compliant; not reporting changes in the particulars of registration such as for example, changes in the Board of Directors, shareholdings, and/ or principal office.
  
- **Underwriting:**  
Companies have Underwriting Manuals only for some specified classes but not for all the classes of business they underwrite.
  
- **Claims:**  
The following discrepancies were noted in handling claims:
  - Claim Procedures manual not in place;
  - Not registering and making provision for claims as soon as the claim intimation is received. Instead provision is made for claims at year-end or at the time of settlement of the claim. For this reason, most claims were settled for an amount equal to the provision / reserves made.
  - Claim files were closed without observing due procedures. Claimants were therefore not notified of the decision of closing files as no- claims.
  
- **Financial Concerns:**  
Companies continue to violate Section 33 of the Act by granting unsecured credit or loans to Directors and other related parties. Related party transactions (unsecured loan) were a major factor in the current global financial crisis.

Notwithstanding the above, we have noted some improvements in the submission of financial returns by the companies; at least within the extended time limit. I might remind you here that collecting penalty fees is not an income generating tool for the Registrar. It is merely a mechanism to allow for:

- submission of financial statements within the stipulated time limit;
- timely analysis and assessment of the financial soundness of companies; and
- timely introduction of necessary measures for correcting any existing deficiencies and to prevent new deficiencies which may be reflected in the statements.

## INSURANCE INTERMEDIARIES:

The principal areas of concern are:

- **Late registration of intermediaries:**

The legislation requires that every insurance agent, brokers, and salesmen shall submit to the Registrar an application to renew a certificate of registration not later than 30 days before the anniversary date of the issue of the certificate of registration. Furthermore, compensation to unregistered agents, brokers, and salesmen is an offence. Insurers and Agencies must therefore ensure that the intermediaries with whom they do business are in possession of a valid registration certificate.

- **Notice of Termination of Agency or Insurance Salesmen:**

Section 70 of the Act states “where the contract of a registered insurance agent or a registered insurance salesman is terminated or **amended**, notice in writing **shall** be given to the Registrar by the insurance agent or the insurance salesman as the case may be, and by the **principal** with whom he or she is contracted. A person who fails to comply with this section commits an offence”.

Without exception Insurers and Intermediaries are required to comply with this provision. The incidence of non-compliance in this respect is too frequent and leaves much to be desired of both principals and salesmen.

- **Non submission / Late submission of Financial Statements by the Agents and Brokers**

Despite regular monitoring, non submission or late submission of the audited financial statements by agents and brokers remains a major problem.

- **Liability for Unlawful Contracts:**

Section 73 of the Act states “An insurance agent, an insurance broker or an insurance salesman is personally liable to the insured on all contracts of insurance unlawfully made by or through him or her directly or indirectly with any insurer not registered to carry on insurance business in Saint Lucia in the same manner as if such insurance agent, insurance broker or insurance salesman had been the insurer”.

Notwithstanding the severity of this provision and more importantly that the intermediary is to be held directly responsible for such breach, we were alarmed to discover that an Intermediary had sold EFPAs to Saint Lucian residents through an off-country entity in the region as the sale of this product had been stopped by the Registrar. What is significant here is the sale could not have been identified as it

would not appear in the local branch accounts and therefore remain outside the purview of the Registrar. And I need not add, the local investors do not have the protection of the Registrar neither can the assets of that company be used to liquidate these liabilities.

- **Failure to Remit Premiums to Insurer:**

We have noted an unacceptably high level of payables by brokers to insurers/agents. These receivables remain pending over a period of 9 and 12 months. Not too long ago, two insurance brokers declared insolvency owing to the high amount of payables to insurers and agencies. In the situation, insurers followed the easiest path and cancelled the policies of many clients. It was only after the intervention by the Insurance Council and its President that recoveries for the insurers were eventually secured.

We believe the market is heading in the same direction as the brokers are highly indebted with payables. The provisions of Section 79 are patently clear and provide sufficient guidance with regard to securing the interest of the insurers. However, the onus is on the insurers / agencies to inform the office of the Registrar of any non-compliance by the brokers within the time limit stipulated in the Act. We are minded that insurers and agencies may well posit that this is a business decision and ought not to be in the purview of the Registrar. I must advise though, and very strongly so, that in ALL such circumstances the Insurer will not be allowed to take the recourse of canceling the policies of the clients if they fail to comply with the provisions of the Act.

At a meeting with the Registrar, the President of the Council advised that Council issued annually a Certificate of Compliance to members who remained in compliance with the Code of Ethics established by Council. In this regard, I urge the President to formulate standard guidelines and practices and to monitor members on two specific issues:

- I. Outstanding Receivables and Payables by insurance intermediaries (agents and brokers); and
- II. Subrogation Recoveries among insurers

In respect of the subrogation issue I believe a quick observation is in order. It is useful to note the court ruling in the case, Supermarkets General Corp vs United States, that liabilities for personal injury and property damage must be determined by the defendants' admission of the liability or as a result of litigation.

**Review on Industry's Performance:**

### **General Insurance Business**

- **Total Gross Premium** recorded in 2008 stood at XCD 162,487,518; an increase of 5.8% or XCD 8,978,832 over last year.
- **Property business contributed** 46% of the total, followed by **Motor vehicles (31 %) and Personal Accident (13 %)**.
- **Property insurance** recorded growth of 8 % in contrast with 4 % last year in spite of the global financial recession. This suggests that the insured may be covering previously uncovered properties.
- **Growth in the Motor vehicle** business grew by 3%
- **Pecuniary Loss business** grew by 4% and represents 1.5% of total gross premiums. This means that there is growth potential for this class of business and the insurers should focus their efforts on developing this class of business
- **Net Written Premium** increased by 6%. However 55% of gross written premiums were retained; nearly the same level as last year, indicating that premiums ceded as reinsurance premiums was nearly constant (not a hard re-insurance market).
- **Underwriting Profitability:** The Combined Ratios for the four major classes of business are:
  - Property: 42.13%
  - Motor: 83.02 %; and
  - Personal accident: 87.81 %,

The industry generated total underwriting profit of 33% indicating its underwriting prudence. One concern remains however. Outstanding claims increased by 15 %. No doubt the need for more expeditious claims settlement is emphasized here.

### **Claims**

At close of 2007 the industry's outstanding claims totaled XCD 27 million. By year-end 2008 this position worsened by an additional 2.5% to 27.8 million. The total claims incurred during 2008 amounted to XCD 37 million. Of the claims incurred, 47% was in respect of motor, 28% personal accident and 15.2% property. It is evident that greater effort is required in compensating the insured for the risks which had been covered in good faith.

### **LONG-TERM INSURANCE BUSINESS**

Long term business recorded a decline of 1.8% in premiums. Total gross premium for 2008 stood at XCD 79,698,142 compared to last year's figure of XCD 81,161,293.

As you must no doubt be aware, the Insurance Industry is fairly dynamic and is constantly faced with threats and challenges. Recent experience in long term business emphasizes the necessity for monitoring liquidity and solvency across the business lines. While we may be better off than our counter parts in the region, the interests of the policyholders are not fully protected due to the shortfall in insurance funds. Against this backdrop, I take the opportunity to urge all insurers to spare no



effort in satisfying fully the required solvency margin and to establish the statutory funds for the protection of policyholders.

Mr. President, Council Members, the Office of the Registrar looks forward to your continued support as we engage you in the implementation of these vital initiatives. I thank you for your contribution to the development of the insurance Sector and wish you continued success in your achievement as you strive to achieve the objectives you've set yourselves and your organisation.

I thank you.

Registrar of Insurance  
Financial Sector Supervision Unit  
Ministry of Finance

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