

Reinsurance Working Party - Meeting

Brussels, Belgium, 4 December 2003 at 10 am

Minutes

PRESENT

Colin Croly (chairman)

John Arpel

Sergio Barroso de Mello

Christian Bouckaert

Reinhard Dallmayr

Michelle George

Michael Gill

Rose-Marie Lundstrom

Michael Mendelowitz

Rob Merkin (secretary)

Peter Gad Naschitz

Peggy Sharon

Stefan Speyer

Carole Sportes

APOLOGIES

Kathy Posner

Lars Moelgaard

Lorenzo Capotosti

Guillermo Lascano Quintana

Torben Bondrop

Tony Kay

Mikael Rosenmejer

1 Report on progress of Questionnaires

A number of general matters relating to questionnaires were discussed, and the following points were made.

(a) Colin Croly stated that about 14 responses were the minimum required for a meaningful report. He also commented that it was important for responses to be received quickly, as otherwise material earlier submitted would become out of date and it might not be possible to incorporate very late answers.

(b) It should be appreciated by those preparing reports that cross-references to other reports should be used where appropriate.

(c) There was thought to be no need for the drafting of guidelines for those preparing reports, as it was sufficient to follow the structure of previous reports.

(d) At some point in the future there might be a need for a separate Questionnaire on commutation and run-off even though the report might be fairly slender. Michelle George pointed out that there is a market report on these issues due out in 2004 and it might be possible to produce a Questionnaire in the light of that report.

As to the questionnaires themselves:

- The revised version of Questionnaire 1 was considered. It was agreed that the section on ART should be expanded, and that fronting should be treated separately. The Questionnaire will be redrafted by Rob Merkin and circulated in advance of the next Working Party meeting.
- Michael Mendelowitz reported that Report 4 on Event has been prepared. There were about 15 responses, some of which have been updated since first being submitted. This needs to be published quickly before the WTC litigation in the United States proceeds any further.
- Report 5 has been prepared and is ready for publication.
- Report 6 has been prepared and Colin Croly asked Michael Gill to pass on the Working Party's thanks to his team for their excellent work.
- Rob Merkin reported that Report 7 could not be prepared for at least a year, as the EC Directive is not due to be implemented until the beginning of 2005. It was agreed that this report will be shelved, that the Questionnaire will be re-issued once the position within the Member States is clear. It was agreed that there should be discussion on the question of assets in the hands of intermediaries, although this matter is dealt with in the Directive.
- Peggy Sharon reported that there had been few responses to Questionnaire 8 from common law jurisdictions despite the October 2003 deadline. Separate versions of the UK response had been prepared by Denton Wilde Sapte (which was tabled) and Barlow Lyde & Gilbert, and the authors would pool their responses.
- Questionnaire 9, prepared by the Argentinian chapter, is in draft form. Colin Croly noted that there were some overlaps between Questionnaire 6 and Questionnaire 9, particularly in relation to cut-through clauses. Michael Gill

saw no problem with this as some degree of duplication between reports was inevitable, and that cross-referring was possible. It was agreed that Questionnaire 9 should be extended to conflict of laws issues, in particular in the light of the EC Regulation on conflict of laws and insolvency. There should also be a question as to whether there should be a guarantee or reserve fund in the event of an insolvency, and the further issue of whether commutation agreements receive any form of protection in insolvency. Something should be included on the application for insolvency proceedings and the administration of insolvency. Michelle George and Michael Gill offered to draft some questions on the practical side of things to assist the Argentinian chapter. There is probably no need to include the issue of insolvent intermediaries in this Questionnaire, but there should in the final report be a cross-reference to the intermediaries Questionnaire.

2. Publication

Colin Croly reported that Informa are no longer interested in publishing the reports, and it was agreed that the reports should be published privately. The main costs are design and printing. Once a design has been agreed, the design costs disappear. Based on initial print run of 150 copies of each report, printing costs will amount to £7.00, design costs, £2.50, and the cost of printing 3,000 promotional flyers will be £5.00 per report. This give a total production cost of approximately £15 per copy. Allowing for postage, packing, administration etc, and to allow for a discounted sale price for purchase of all three reports, an appropriate sale price per report would be £25. The problem is underwriting the total cost of £2,250 per report. Colin Croly suggested that sponsorship was the way forward, and that in the first instance the Reporter's firm should be given the opportunity to sponsor the report. Further possibilities include advance sales to organisations and electronic publishing.

The possibility of Spanish translation was raised, and it was agreed that it would also be necessary to find a sponsor for translation.

It was agreed that, to allow matters to move forward for the publication of the outstanding reports, members of the Working Party should see whether their own firms would be willing to sponsor publication and report back to Colin Croly by the end of January.

It was agreed that copyright should vest in the Reinsurance Working Party.

3. Michael Gill's presentation

Michael Gill gave a presentation on the financial reinsurance contracts entered into by FAI, as investigated by the Royal Commission into the collapse of HIH. He also analysed the recent decision in *New Cap Re v Faraday Underwriting Ltd*. Michael's detailed paper is appended to these minutes.

4. Next meeting

The next meeting will be in London in May, at the London Colloquium celebrating BILAs 40th Anniversary, 20-21 May. The Working Party will probably meet on 19th May, and would assist BILA in its preparation for the Colloquium's topic. The second meeting for 2004 would depend upon the decision of the Presidential Council as to where its second meeting would be held [NOTE: the Presidential Council has since decided to meet in Madrid in November 2004].

5. Any other business

Colin Croly asked for suggestions as to possible new members of the Working Party, particularly from the industry, and also academics, so that they can be approached. Michael Gill suggested that the Working Party should on a regular basis invite a speaker from one of the leading reinsurers to talk about practical issues, so as to establish firm links between the Working Party and the industry. Colin Croly noted that a number of attempts to interest reinsurers had been made in the past, and agreed to circulate an up-to-date list of members of the Working Party so that suggestions for new members can be made.