

財團法人保險安定基金出國報告  
(出國類別：會議)

參與加拿大保險保障機制國際論壇  
以及參訪報告

服務機關：財團法人保險安定基金

出國人職稱：總經理、資深研究員

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出國地區：加拿大多倫多市

出國期間：100年11月21日至100年11月27日

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## 一、前言

職等代表本基金於應邀參與由加拿大人壽保險保障公司(Assuris)於 100 年 11 月 23 日至 24 日於加拿大多倫多舉辦之第一屆保險保障機制國際論壇 (1<sup>st</sup> International Forum for Insurance Guarantee Scheme)，本次會議計有來自加拿大、美國、韓國、英國、德國、挪威、肯亞、馬來西亞、巴哈馬、香港及台灣等 11 國家與地區，四十多位代表參與，我國除本基金外，主管機關金融監督管理委員會保險局以及中央存款保險公司亦有派代表與會。加拿大壽險保障公司(Assuris)鑒於國際間保險保障機制間的合作日益重要，尤其 IFRS 4 預計實施的方向，將造成原本保險本業經營管理不錯的加拿大面臨重大困擾，即寄望能逐漸提升並加深其自身在國際間發聲的地位，並與各國交流經驗期可獲得良好回饋，故透過其本身力量邀請來自加拿大、美國、德國、馬來西亞、挪威等國保險保障機構及專家學者等，介紹該國的保險保障業務，同時也邀請加拿大方面的專家學者講授有關消費者與公共關係方面的危機溝通技巧、問題銀行業的處理機制及問題保險業的處理經驗等主題，與會人員透過綜合討論的方式進行交流，並建立起良好的合作關係。

本次造訪加拿大，除參與論壇會議之外，尚有拜訪加拿大金融機

構監理總署 (The Office of the Superintendent of Financial Institutions, 以下簡稱 OSFI) 及產險保障公司(PACICC), 就主管機關較為關心的幾個議題與 OSFI 進行交流, 同時也了解加拿大方面的預警制度運作的方式, 返國後即透過完成此份報告, 祈能供作為我國保險安定機制之參考。

#### ※主要拜訪行程

(1)100 年 11 月 21 日(星期一)

中正機場集合, 出發赴加拿大多倫多

(2)100 年 11 月 22 日(星期二)

拜訪 OSFI 多倫多辦公室

拜訪對象:

1. Calvin Johansson, CMA, Director, Regulatory and Supervisory Practices Division
2. Julie D. Thomson, M.B.A., Practices Specialist, Supervisory Practice Division
3. Emiel J. van der Velden, Advisor to the Director, Legislation and Policy Initiatives Legislation and Approvals Division, Regulator Sector

(3)100 年 11 月 23 日(星期三)及 100 年 11 月 24 日(星期四)

參與第一屆保險保障機制國際論壇(1<sup>st</sup> International Forum for Insurance Guarantee Scheme)

(4)100 年 11 月 25 日(星期五)

拜訪加拿大產險保障公司

拜訪對象：

1. Jim Harries, Vice President, Operations
2. Grant Kelly, Vice President, Chief Economist, Financial Analysis & Regulatory Affairs

(5)100 年 11 月 26 日(星期六)

由於班機時間，於當地時間 11 月 26 日深夜返國，台北時間 11

月 28 日抵達台北

## 二、拜訪加拿大金融機構監理總署

本基金第一次造訪加拿大時，即有拜訪 OSFI，當時主要了解多倫多中心對於保險業精算財務面的監理，本次藉由參加加拿大國際保險安定機制論壇之機會，在有我國主管機關人員陪同下，再次順道拜訪 OSFI，本次主要了解預警報表填報和法規面的監理，收獲相當豐富。

以下即就本次收獲的部分進行介紹：

### (一) 加拿大預警制度的再深入了解

就申報資料而言，本次造訪了解到加拿大方面產壽險業需填報的預警報表有如下所述：

#### 1. 壽險業所需要的填報財務資料類別

##### (1) LIFE-1:

加拿大本土公司所填報的檔案，此類表單的網址係在：

[http://www.osfi-bsif.gc.ca/osfi/index\\_e.aspx?DetailID=677](http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=677)

主要包括兩份具有法律效力的填報聲明書（Affidavit Verifying Sheets，其中一份為魁北克地區專用），其他則為公司基本資訊報表、財務報表，包含合併填報類的財務報表（Consolidated Financial Statements And Exhibits）和單獨填報類的報表（Non-Consolidated Financial Statements And Exhibits），填報內容會每

半年修正乙次。

**(2) LIFE-2:**

加拿大外商公司所填報的檔案，此類表單的網址係在：

[http://www.osfi-bsif.gc.ca/osfi/index\\_e.aspx?DetailID=679](http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=679)

也有包括具有法律效力的填報聲明書 (Affidavit Verifying Sheets)，其他同樣亦為公司基本資訊報表、財務報表等，填報內容會每半年修正乙次。

**(3) Appointed Actuary Report:**

內部簽證精算師報告。

**(4) DCAT Report:**

動態資本適足測試報告，主要內容為壓力測試。

**(5) External Review Report:**

外部簽證精算師報告，類似 Peer Review 或外部簽證會計師概念而要求的報告。

**(6) Auditor's Report on MCCSR:**

經稽核人員覆核的資本適足率報告，本國商報表代號為 OSFI-87，外商報表代號為 OSFI-86。

**(7) Insurance Holding Companies & Non-operating Life Companies:**

若主要股東為控股集團公司或為非專業壽險經營者需填報此類報表，一季填報乙次，報表代號為 OSFI-588。

**(8) Worldwide Financial Statement:**

若為外商公司須提供合併財務報表。

2. 產險業所需要的填報財務資料類別

**(1) P&C-1:**

加拿大本土公司所填報的檔案(含資本適足率)，此類表單的網

址係在：

[http://www.osfi-bsif.gc.ca/osfi/index\\_e.aspx?DetailID=671](http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=671)

**(2) P&C-2:**

加拿大外商公司所填報的檔案(含資本適足率)，此類表單的網

址係在：

[http://www.osfi-bsif.gc.ca/osfi/index\\_e.aspx?DetailID=675](http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=675)

**(3) Appointed Actuary Report:**

內部簽證精算師報告。

**(4) DCAT Report:**

動態資本適足測試報告，主要內容為壓力測試。

**(5) External Review Report:**

外部簽證精算師報告，類似 Peer Review 或外部簽證會計師概念而要求的報告。

**(6) P&C Business Plan:**

由於產險業多經營短期險，故需提供長期公司發展計畫。

**(7) Earthquake Exposure Data:**

有經營地震保險的公司須提供地震險暴險資料。

**(8) Unpaid Claims and Loss Ratio Data:**

自 2010 年起，產險需另行提供未滿期理賠準備金與損失率相關資料，報表代號為 OSFI-620。

**(3) 產壽險業所共同需要的填報業務資料類別**

**(1) Copy of Power of Attorney for Foreign Insurance Companies:**

外商保險業之律師聲明書，主要記載代表公司的法律顧問或律



師的詳細聯絡資訊與聲明資料，報表代號為 OSFI-25。

**(2) Return of Corporate Information:**

主要記載公司註冊資料、主要經營團隊、關係人或企業的詳細聯絡資訊與聲明資料，一年填報乙次，報表代號為 OSFI-57。

**(3) Notice of Change of Corporate Information:**

當年度之間，OSFI-57 報表內容有所更動時需填報此一報表，報表代號為 OSFI-57A。

**(4) Return of Officers, Auditor and Appointed Actuary (for foreign insurance companies only):**

主要記載外商公司之主要經營團隊的詳細聯絡資訊與聲明資料，一年填報乙次，報表代號為 OSFI-513，同樣地，當年度之間，OSFI-513 報表內容有所更動時需填報此一報表，報表代號為 OSFI-513A。

**(5) Return of Fiscal Year End Change:**

主要記載與聲明公司之會計年度起訖期間，報表代號為 OSFI-596。

**(6) Monthly Report – United Nations Suppression of Terrorism Regulations:**

主要記載聯合國組織發布之國際與洗錢與恐怖組織有關之資訊，報表代號為 OSFI-525。

**(7) Notice of Annual or Special Meeting of Shareholders, Proxy Circular/ Dissidents Proxy Circular, Form of Proxy:**

主要為股東年會或特別會議之會議記錄摘要，記載重要的通過

意見與反對意見，報表代號為 OSFI-565。

**(8) Annual Financial Statement, Auditors Report, other material to go to Shareholders:**

主要為年度財務報表、稽核報告或其他呈送股東之報表文件，報表代號為 OSFI-596。

**(9) Report of the Conduct Review Committee:**

加拿大稱之為管理與執行委員會報告，即類似近年度各國監理單位所要求的風險管理委員會報告，報表代號為 OSFI-598。

**(10) By Law:**

公司章程，報表代號為 OSFI-599。

3. 魁北克省的填報系統

魁北克省具有獨立的填報系統，稱之為 Exigences en matière de suffisance des fonds propres，業者需填報至 Autorité des Marchés Financiers。網頁在：

<http://www.lautorite.qc.ca/fr/exigences-matiere-suffisance-fonds-propres-corpo.html>

魁北克省之填報系統較 OSFI 簡易，內容類似 OSFI 的 Life-1 系列報表。雖然魁北克省的金融保險業資料毋須填至 OSFI，但會提供予加拿大的產壽險保障公司，即類似我國的保險安定基金，OSFI 則透過加拿大的產壽險保障公司了解相關資訊。

4. 三方機構資料庫系統(Tri-Agency Database System)

三方機構資料庫系統係由加拿大監理機關 OSFI(含銀行、保

險)、存款保險公司(CDIC)、中央銀行聯合委託顧問公司，開發金融業者監理資料所需填報之資訊系統，供金融業者參考選購。金融業者亦可自行開發系統。加拿大政府訂定監理資料需求文件規格，公布於網站。金融業者可購買顧問公司開發之系統或自行開發系統，以申報監理資料。此系統稱為資料自動轉換系統(ADT: Automatic Data Transfer System)。

#### 5. 填報延遲及錯誤處罰架構

為提升監理資料申報品質，加拿大政府訂定處罰辦法，以免業者延遲申報、填報錯誤或不實，此辦法稱為 LEFP(Late and Erroneous Filing Penalty Framework)。除因延遲填報需受處罰外，三方機構資料庫系統亦訂定相關資料檢核機制，並定義 Type I 錯誤及 Type II 錯誤之資料項目：

(1)**Type I 錯誤**：正面表列不可錯誤的資料項目，如發生錯誤即依金融機構之規模予以罰款。

(2)**Type II 錯誤**：非 Type I 錯誤之資料項目，經金融機構自行發現或經 RM/AO 評估認可者，可由申報公司進行抽換申報報表。

#### (二) OSFI 實際執行接管所面臨的課題

在本次行前，OSFI 要求我方提出本次拜訪的議程，於行前一週提

出如附件一後，OSFI 非常認真地為我方準備了一份投影片資料，將大部分問題回答於其中，尤其是就保險公司進行風險基礎評估和早期干預的法律系統，作了更深入的說明，即 OSFI 係根據加拿大保險業法 (Insurance Companies Act) 所賦予 OSFI 的早期酌情干預權，讓 OSFI 可以得參酌風險基礎評估結果，儘早干預以解決可能出現在保險公司中的問題。在此之中，OSFI 與會的官方專家認為對於加拿大金融監理最重要的成功因素是強制執行的能力 (Mandate)、被法律賦予的早期干預權 (Intervention Power) 以及即早和保險公司展開雙向溝通的監控機制 (Communication)。

為了監控保險公司，OSFI 再度為我們重申了加拿大特有的四級累進預警系統，即早期預警 (Early Warning)、財務雖可繼續經營但有償付能力方面的風險 (Risk to financial viability or solvency)、受到嚴重質疑的未來的財務可行性 (Future financial viability in serious doubt)、不可繼續經營/破產迫在眉睫 (Non-viability/insolvency imminent)，在歷經這四階段之後，OSFI 得依法接管、並要求產壽險保障公司 PACCIC 和 Assuris 扮演主管機關的代理人的角色，委託財務顧問公司進行清理清算或概括移轉等措施之評估，並且，在保險公司淨值尚為正值並接近零時，就必須視該公司狀況適時停止該公司的新契約銷售，以能有足夠的資本能應付

剩下有效契約的清理事宜。此時，被接管的公司通常還會令 OSFI

面臨以下六種課題而有待解決：

1. 資產不足 (Insufficient assets)
2. 無法支付既有的債務 (Failure to pay liabilities)
3. 資產的會計帳出現不適當情形 (Improper accounting of assets)
4. 法定資本不足 (Insufficient regulatory capital)
5. 無法達成主管機關要求增資的命令 (Failure to comply with an order to increase capital or assets)
6. 其它會導致損害的狀況 (Any other prejudicial state of affairs)

在面臨以上課題時，OSFI 會將相關資料呈送法院，法院審理後會發布命令以提供 OSFI 進行各種監理行動之正當性，例如強制解散其董事會、強制清理清算、控制該公司資產、控制該公司所有行政與人事作業等等，而當該保險公司經已經被認定為喪失清償能力時，同時會進入依清算重整法(Winding-up and Restructuring Act)之破產處理程序，即必須在保障保戶權益的前提下執行清算、重整等作業。

### 三、論壇主題（一）：消費者關係與公共關係的危機處理

本次論壇一開始，即邀請 Neil Bearse 和 Daniel Tisch 兩位先生，一位是學者，一位是媒體公關公司負責人，分別就消費者層面和媒體層面，講解當金融機構或保險公司發生倒閉，各種謠言四起時，主管機關如何與各種利害相關者（stakeholder，如政府、保險業者、金融安全保障機制成員、保戶甚至是一般社會大眾等等）密切協調合作，以確保金融保險市場的持續正常運作，並使消費大眾對市場仍保持信心。是故，為達此目標，平時應即備妥危機溝通計畫，充份利用各種溝通方法，傳達給權益相關者各種重要訊息和特定的處理措施，如透過實際派員參與(Anticipate)、再教育宣導(Educate)、聆聽各權益相關者心聲(Listen)、適當的回應(Respond)、集中專注處理危機(Focus)、保持與各權益相關者的溝通管道(Relations)、危機產生時主管機關內部的工作分派(Internal alignment)等。

此外，危機溝通協調計畫亦應評估各種權益相關者最佳的溝通工具為何？以及採取特定溝通方式所需要的成本並編列預算。最近幾年，除了傳統媒體之外，最有效的新興危機溝通工具可推舉網路科技(online technologies)、行動科技(mobile technologies)及社群媒體(social media)，此等溝通工具改變了過去主管機關與權益相關者的互動模

式，特別是社群媒體興起，任何訊息可經由網路科技和行動科技，透過社群媒體立即發布予社會大眾知悉，因此主管機關可考慮平時就建立起透過社群媒體傳遞與權益相關者攸關訊息的習慣，此舉於金融機構或保險公司倒閉事件發生時會展現其效果。

## 四、論壇主題（二）：銀行業的退場處理現況

對於保險公司一旦發生問題無法繼續經營時，主管機關及負責保險安定保障機制者如何介入處理並保障保單持有人權益，往往銀行業的經驗提供了保險業相當好的參考。本次演講者 Michèle Bourque 女士為加拿大存保公司總經理暨執行長，在加拿大存保公司有 18 年的工作經驗，專長為風險管理，過去對加拿大存保公司在風險評估、督導問題銀行退場以及引入過渡銀行概念至干預制度內貢獻良多，本次論壇她協助我們在幽默風趣的氣氛中了解加拿大存保公司在金融海嘯後的新處理機制，令人獲益匪淺。

### （一）加拿大存保公司在金融危機吸取到的重要經驗

加拿大存保公司總經理暨執行長首先提及此次全球金融風暴帶來的重要啟示，包括：

#### 1. 處理問題金融機構的時間是非常有限的

倘主管機關未能做好事前準備，大型金融機構仍有可能倒閉，一旦此等機構倒閉，主管機關和存保公司將面臨極大的壓力，因為整個社會可以忍耐力容許的時間不長，因此金融監理機關應時時刻刻作好未



兩綢繆的準備，透過總體與個體審慎監理雙軌並行，降低大型機構倒閉發生機率。

## 2. 納稅義務人實無責任要買單退場所需經費

問題金融機構倒閉處理成本不應再由全體納稅義務人負擔，反而應加強市場紀律並導入處理成本由全體金融機構共同分攤的觀念。

## 3. 金融機構的服務不可以中斷

大型問題金融機構倒閉將嚴重影響相關權益者及金融市場交易，主管機關應考量與其交易對手的合作和其核心運作機制不間斷的前提下使其順利退出市場。

## 4. 流動性非常重要

金融市場交易活絡至為重要，影響民眾對金融市場之信心，因此應擬妥緊急備援資金計畫，以因應緊急流動性不足問題。

## 5. 民眾必須了解存保，存保機制才能方便運作

倘社會大眾對存款保險認識有限，存保制度將無法發揮功效，因此應加強存款保險公眾意識宣導。

## (二)金融危機之後加拿大存保公司變革

## 1. 處理權限擴大

加拿大政府鑒於金融海嘯的影響，2009 年立法讓存保公司得設立過渡銀行，並得持有存保公司要保機構之股權以及需依法建置資訊系統及資料庫。

## 2. 融資額度提高

得融資之額度由原 16 億加幣提高至 170 億加幣。

## 3. 處理策略更具彈性

倘問題金融機構倒閉恐危及金融安定，得報請財政部同意後免除加拿大法規中對於處理問題金融機構必須維持最小成本的規定。另若有必要，得於任何時候辦理要保機構處理前置作業檢查。

## 4. 增加公眾宣導活動

加拿大於金融海嘯後推動有史以來規模最大宣導活動，包括設立專門諮詢中心，答覆民眾有關存款保險任何疑問，大幅提昇民眾對存保公司認識度(為 90%以上)及最高保額認知度(約為 33%)。

### (三)加拿大存保公司新處理策略-過渡銀行

加拿大存保公司為因應全球金融風暴並強化對問題金融機構處理效能，基於『納稅義務人實無責任要買單退場所需經費』的理念，

於 2009 年 7 月 1 日立法通過，除提供財務協助、業務移轉及重整 (Financial Institutions Restructuring Provisions, FIRP) 等措施外，尚可以透過業者分攤經營費用的前提下設立過渡銀行，以處理問題金融機構，此舉可增加存保公司之處理彈性，特別是當大型機構倒閉，無法於該總體環境下尋覓合適買家時。

#### (四)增加設立過渡銀行處理權限之理由

Bourque 女士從時間性、市場紀律與處理成本分攤及金融服務不中斷等三大方向，說明加拿大存保公司為何需要增加本項權限：

##### 1. 時間性：

藉由設立過渡銀行可立即恢復民眾對金融市場之信心，且可以時間換取空間，對問題金融機構加以整頓、提高賣相並尋得好買家。

##### 2. 市場紀律與處理成本分攤：

透過銀行同業事前提撥基金中共同分攤、更換既有董事會和經營管理階層以及對於非要保機構進行談判降低既有承諾給付 (Haircut) 等方式，達到不再讓納稅義務人負擔的目的，以提升市場紀律。

##### 3. 金融服務不中斷：

問題金融機構重要業務得以持續運作，不會被賤價出售，且重要

的銀行經營價值得以被維持以使存款人不致於無法提領存款。

## (五)過渡銀行運作

過渡銀行會透過以下三項要素啟動運作：

### 1. 判斷是否啟動

OSFI 需先判定該問題金融機構必須存在繼續經營價值，過渡銀行作業才有啟動依據。

### 2. 命令

指派存保公司擔任主管機關代理清理人，主導設立過渡銀行相關事宜。

### 3. 必須在週末執行啟動

問題金融機構經主管機關判斷需以設立過渡銀行方式處理後，存保公司需於週末進駐，於週末兩天之內積極辦理存戶存款明細、立即撤換經營管理團隊、董事會成員並發布新成員名單，確認各項資產負債金額並區分可轉移資產與不良資產等事項。於下週一營業開始前，必須完成將保額內存款及可轉移資產移轉至過渡銀行，讓週一得以繼續正常提供金融服務，倘該過渡銀行有流動性需求時，存保公司則會立即融資以提供資金援助。至於不良資產及其他債權等非要保項目則會留待後續清理清算。

## 五、論壇主題（三）：保險業的退場處理經驗

加拿大對於保險公司發生問題無法繼續經營時，主管機關及負責保險保障機制之機構會委託財務顧問站在第一線介入處理並執行實際保障保單持有人權益的行動，這些財務顧問通常來自會計師事務所，為具有豐富的保險、清理清算等實務經驗的市場專業人士，往往受人尊重，所以實際在執行政府命令時能更獲得認同而有效率。

本次演講者 Robert O. Sanderson 先生為 KPMG 的財務顧問，他的人生經歷幾乎就是一部加拿大的重要保險業退場經驗史，加拿大在過去 3 家壽險公司的退場經驗中，他就參與了其中 2 家壽險公司 (Sovereign Life 以及 Confederation Life) 之清理工作並擔任其執行長，他目前在歐州擔任 INSOL(國際破產從業員協會，是一個為重組、清算及專業人士破產而設的組織，地址在英國倫敦) 主席，這組織希望能替全球的清理清算金融機構的專業人員建立證照制度，而 Robert 即為該組織主席，除此之外，他目前也受聘於巴拿馬政府並為該國服務。

由於本場演講為本次論壇中最重要的演講，職特地將所有拿到的原文會議資料整理後轉為文字格式作為本報告之附件二，供後續研究者能有完整資訊參考，總之，在短短兩個小時間就吸收加拿大過去數

十年重要的保險業退場經驗，更是令人獲益匪淺。

### (一) 架構

Robert 的報告主題訂為 Resolution，此字義含意有提供決策、新年新希望之意義。值得一提的是，在加拿大過去清理幾家保險公司過程中，往往會遇到聖誕節，大家都去放假了，所以都會在聖誕節後才能得到法院的處分令；此外，Resolution 又有分解分割處理的意義，而他所處理問題保險業的例子都是採分解分割的方式去做以降低賠付金額，故這應是此一主題之最大意義。

整篇的架構分為兩個主要部分，第一個部分是理論部份，就像學歷，你若要在大學拿『Insolvency』這門課的學分，看這部份就夠了；第二部份為實際案例，他舉三個例子都是他接管過的公司(謹猜想為 Sovereign Life、Confederation Life 和 Reliance Insurance Company 加拿大分公司)。

### (二) 理論部份

這部分分為四個項目，包含退場處理需具備的背景、決策步驟、面臨的潛在挑戰和重點歸納，各項目均能提綱挈領，精要的列出處理保險業退場的重要原則。

## 1. 退場處理需具備的背景

當接管一家公司前，要先了解它的背景及接管前所有法定干預階段都要走完，干預工具都要用完，才啟動接管作業，台灣與加拿大的干預制度不一樣，加拿大明確分為 4-5 個干預階段，在干預完後評估這家公司為完全沒有希望，再進行接管。

另會對補償基金(Compensation Fund)（或可稱安定基金提撥款）進行屬性定位，例如基金足不足夠？是用事前或事後徵收的基金？是否要設計一個特殊的補償基金架構以利募款？等等。諸如此類，往往會針對不同的接管案例成立不同的中間機構，負責處理破產公司的資金援助事務，這概念均必須是一分離帳戶的概念，將補償金額獨立出來專款專用，所以受接管的保險公司所需要的額外經費則需透過補償基金請款，而經由和補償基金運作人員的互動可獲得一些監理的資訊，而在加拿大，補償基金的角色通常就是由產壽險保險保障公司擔任。

接管之後，會面臨選擇需要的接管或清理清算原則（是否能公正的處理資產和各種利益關係人）、申請適用的法令架構和允許接管的法定時間（法院的角色十分重要）、定位補償基金的屬性、評估是否需要增加融資貸款等等。

站在第一線的清理人會遇到與該公司各種利益關係人，甚或保戶、債權人及不知名的小股東，當中會包括反應激動的關係人，面臨這些激動反抗的反應或不同的聲音時，主管機關必須選擇聆聽，但還是要去做該做的事。也就是說，若一家保險公司已經經歷過完整干預的過程仍無效果最後導致必須接管時，主管機關的行動必須非常明確而堅定。

## 2. 決策步驟

在決策步驟方面，應注意當時的經濟氣氛(Economic Climate)，究竟接管當時是位於景氣的底部或高峰期？一般都是位於景氣底部，保險公司才會破產。

要留意公司失敗的原因(Cause of failure)是什麼，是流動性不足？還是負債面商品賣不好？資產投資不好？管理不好？資本沒有增足？

了解被接管公司的屬性(Attributes of business)是壽險公司或為產險公司是最基本的，決策往往與其所銷售商品有關。

還有公司的資產(Assets)品質以及公司的聲譽(Reputation of company)，均會影響拆解後出售的賣價。

最後，還有會計人員、精算人員及相關專業人員(Accounting，



actuarial & regulatory)處理公司財務資訊的專業品質，這部份會影響處理的時效。

### 3. 面臨的潛在挑戰

下列 15 點為 Robert 所羅列會面臨的潛在挑戰，Robert 主要僅分享資訊系統處理的經驗，因為他處理這些公司最頭痛的就是 IT 系統，特別是一些年金商品，問題會比較大。

#### (1) 接管後究竟要整批出售或分割出售會面臨爭議。

在此值得一提的是，En bloc 是拉丁字，意為統包出售，segmentation 為拆解出售，傳統上為企業併購的大原則，化作目前台灣的法令名詞就是股權交易（En bloc）或營業讓與（segmentation），若問題公司為大公司，擁有多部門或多個生產線，那要在市場找到一家公司，其需求能提供完全一樣的機率太低，故將資產或事業部門切割，賣給市場上有需要的賣家，以取得較好的價格，是較可行的，即切割出售可以使每一包都找到最適合的買方，反之，買方也可以找到他們最適合的資產營業，如此交易會得到最高價格，而使整個公司之交易總價最高。而根據加拿大過去的經驗顯示，將一家已經出問題的公司統包出售的價格較切割出售為低，切割出售會可能會帶來溢

價，但統包出售的後續爭議問題也許會比較少也比較小，但市場上幾乎不會有人買單，甚至，Robert 在這一個段落有特別講到一句話「沒有次交易是不可能的」(it's impossible have no sub-transaction)，可顯見加拿大實務經驗而導致的結論十分清晰。

- (2) 資產是否可用於交易或轉移。
- (3) 最終資產是否會實現其價值。
- (4) 最終債權人的信心是否會恢復。
- (5) 將負債風險和其資產定價風險予以分離的難度。
- (6) 接管後各營業據點是否方便接收資訊和記錄。
- (7) IT 系統的兼容性。
- (8) 對現有業務，原有競爭對手是否願意收購。
- (9) 使用之前商品條款中已具備價格調整機制的力量。
- (10) 監理方面所給予的限制。
- (11) 當時的法律訴訟環境。
- (12) 被接管公司的結構
  - ① 究竟是本國業者或跨國業者？
  - ② 分公司與子公司？
- (13) 行政費用（是繼續經營假設或歷史經驗假設）

(14) 將固定成本轉化為變動成本的能力（這樣才會根據數量和功能進行分割出售）。

(15) 在任何特定的交易能夠提供交易對手信任的代表性和保證能力，或建立減輕交易雙方的風險機制的能力。

#### 4. 重點歸納

最後 Robert 在這部份做了重點歸納，就壽險公司而言，他們的長期業務是具有價值的，這部份未來是可以實現的，所以轉售會具有價值，另外有一些單純收管理費用的生意，其價值只會越來越多（如分離帳戶的投資型遞延年金），至於短期業務就盡量讓其自然走完整個保障期間（Run-off）。

就產險公司而言，個人保險方面業務需注意其有『續保』的權利，這部份可能會帶來轉售價值；商業保險方面則需注意其既有替企業整體安排的計劃是否具有價值；至於進行整批交易雖仍具有困難性，但並非不可能。

就資產面，Robert 單獨拉出分享了一些重要經驗，對於有流動性和自由交易市場的資產，是最有可能轉讓或轉換為現金，具有高度價值，此時需觀察市場，如果市場下跌，策略必須改成持有至景氣復甦，如果市場呈現穩定或上升現象，策略就必須有順序地實現其價值，如

果利率持續下降，繼續持有以實現溢價就是最好的策略。適度的將資產管理在法令允許下，外包出去經營以增加其價值，最後必須建立起市場信心，即令欲收購的公司相信接管團隊的經營效果是優於一般投資和資產管理的供應商。

### (三) 實際案例

#### 1. 案例一：壽險公司（似為 Sovereign Life）

這間公司的特徵是市場佔有率相對較小，即其利益競爭對手是有限的，其主要是經營個人保險業務，這方面該公司提供全系列的壽險保障商品，在通路上主要係靠建構起專屬於公司的業務部隊進行銷售，也同時會與一些個人保險代理人 and 保險代理人公司（Managing General Agents）進行合作，這間公司破產的原因主要是資產品質的問題和一堆股東對該公司進行的訴訟。

接管之後，立即成立一被授權的財務再保公司（CFRIC, Certified Financial Re-Insurance Company）清點該公司的資產負債，區分出好資產與壞資產，之後對負債部分以比例再保險交易的方式提供對完全保障政策，此舉保障了大多數保戶的利益，但少部分保戶由於契約條款緣故，透過協商，僅獲得至少 90% 的利益。之後，大部分品質良

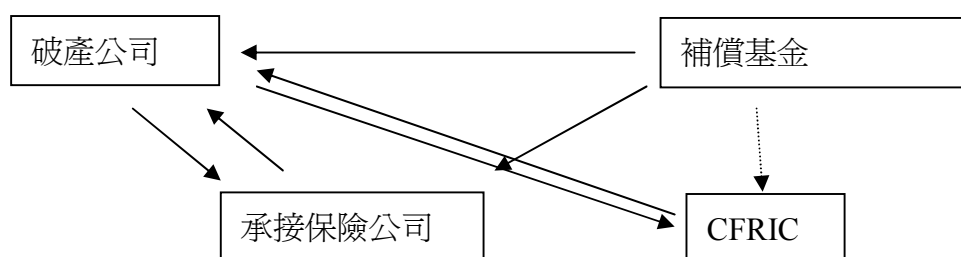
好的資產以合理的價格自被接管的保險公司轉出，由承接業務的保險公司（Assuming Company）接手並支付相對價款予 CFRIC 以執行未來的比例再保險合約，剩下該承接業務保險公司不願接受的資產及負債則轉給 CFRIC，而對於少數無法處理的有毒資產，則由 CFRIC 支付清理費予清理人，而剩餘擁有至少 90% 的利益無法由比例再保險承保的負債部分，再由補償基金提供資金予承接業務的保險公司。在此過程中，為安定人心，業務部隊因為被轉移，為使習慣銷售其他公司的產品，則有附帶推出一套業務銷售獎勵計劃。

在此案例中，有爭議的部份包括：

- (1) 只有一個合格的投標人。
- (2) 如何就市場上沒有相關交易資訊的資產最終價值進行訂價
- (3) CFRIC 可以進行再保險交易的資格被承接業務的保險公司挑戰，  
因為法規對其自有資本的要求很少或根本沒有。
- (4) 為補償銷售隊伍，包括其等待交易確定的期間和必須接受承接業務的保險公司成為其新東家，必須推出獎勵補償方案。
- (5) 法院批准令的取得
  - ① 透過法院直接批准的好處就是不需要逐一透過一位一位保單持有人的同意。
  - ② 透過法院的批准令可以減緩股東上訴的壓力。

(6) 清理人由於位於第一線，會有許多激動反抗的反應或不同的聲音，所以必須在法令上充份授權，以保護出於善意進行接管的清理人。

Robert 提供了各角色的關係圖如下：



## 2. 案例二：壽險公司（似為 Confederation Life）

在接管這間公司所採取的是分割策略，分為負債方面、資產管理方面、投資管理方面、清理結算方面和其他方面進行說明。

### 負債方面

這間公司的分公司及其子公司遍及全加拿大，且為跨國營運，在正式接管前後，整批出售的方式均告完全失敗。且接管當時，經濟環境充滿不確定性，而該公司面臨各種的權利訴訟，更使整體現金管理系統出現風險，所以在進行接管時，開始出現流動性問題。

商品結構中，躉繳即期和遞延年金為其負債商品結構中重要的組

成部分；團體險方面，較為顯著的是壽險和健康險業務，但是買方在有限的時間內實地查核發現，現有失能險的訂價上可能有失誤之處，導致出現了一塊『消失的資產』；團體年金的部分在負債比例中超過了 25%；此外，該公司亦具有分離帳戶的獨立基金商品，並與客戶維持一定程度的資產管理關係（但在接管期間遭凍結房地產基金的贖回）；個人險方面，包括了壽險和失能險、遞延年金（尚包括保證投資合約，此類合約讓公司在短期內面臨潛在承受能量限制的問題）和即期年金。

在資產結構中，擁有超過 70% 的抵押貸款，但抵押貸款的審核過於寬鬆，聲譽不佳，之中包括與房地產連結的私募基金、與基礎建設連結的私募基金，所經營的分離帳戶獨立基金商品對於房地產的投資利益和該公司的房地產利益幾乎綁在一起，許多抵押貸款的貸款價值比率（loan-to-value ratio）和債務範圍（debt service coverage）不同步，但基於目前的承保標準和監理並未限制，所以必須按照其原條款繼續執行，因此公司在抵押貸款方面主要為高收益的還本息收入以及支付無法還款之投資者欠款。但由於當時市場利率下降，大多數所投資的固定收益證券出現高於帳面價值的溢價。

此外，終極資產可變現價值難以確定，因為依法保戶必須優先在

索賠方面得到滿足，但此間公司存有一些特別債務合約是必須比保戶更優先被執行支付索賠，故兩者間如何平衡出現問題，而且，該公司固定運營成本相當高，尤其是在資訊管理和資產管理方面。

接管之後，依商品線將負債切為四塊分別處理：

### (1) 團體壽險及健康險

此一部份由於多半都是短期險，所以可以比照產險處理模式，處理速度最快，在接管後 10 天內宣布新接手者，45 天完成交易。為了保持業務價值避免橫生枝節的損失，同意支付所有未決賠款，也讓承接者有重新訂定失能險假設的權利，差額部份由補償基金完全補償，同時也轉移出大部份的現有員工和電腦系統，之前的訴訟責任由清理人付費，讓承接的保險公司同時接手處理，估計約有 100 萬的保戶權益順利轉移至新公司而獲得保障。此部份的業務轉移，加上成功賣出部份的子公司、不動產以及大型電腦系統，讓清理人可用此筆基金協助處理補償失能險那塊消失的資產。

在處理過程中特別的經驗包括：

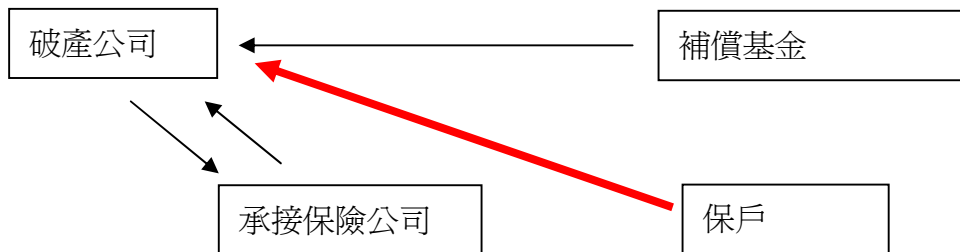
- ① 解決工會對於繼續招攬生意的需求，也滿足法令對於新契約銷售必須被凍結的規定。



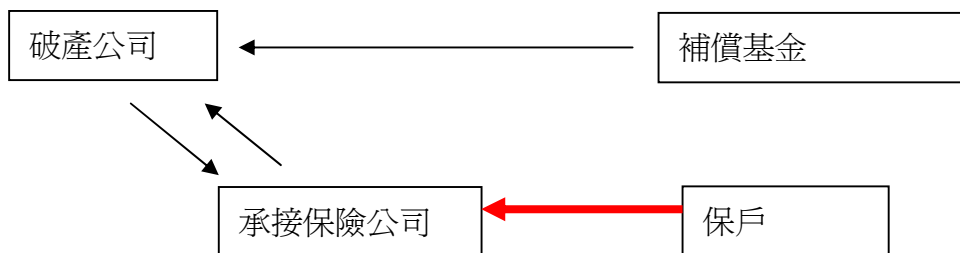
- ② 建立起一個機制，除讓雇主可以因為減少失能給付和其他款項支出時獲得保費減免給予適度優惠誘因外，也同時將轉移首年失能險的利用率（Utilization Rate）設定為 70%，之後逐年調整，對於當年失能險超出預設利用率的保戶，則依法執行削減保障的規定而毋須給付，此一利用率會依貨幣時間價值逐漸向上調整，空間逐漸放大恢復正常。
- ③ 對於一些之前已存在於法院進行中的訴訟案件，成立專門的基金以解決其費用支出的問題

Robert 提供了各角色的關係圖如下：

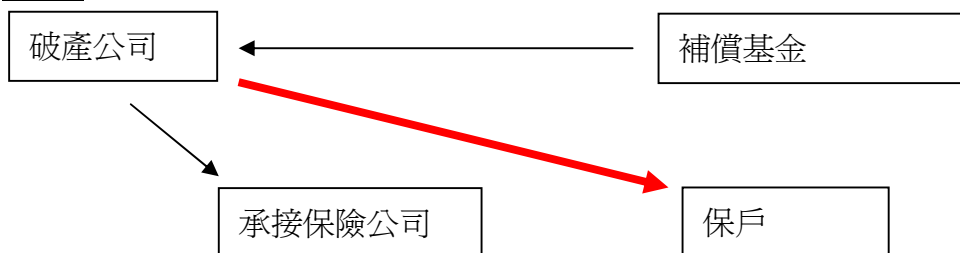
Step 1



Step 2



Step 3





## (2) 個人壽險及健康險

接管後第二步即是處理個人壽險及健康險的保單，首先建立一專門的代管基金，處理尚在進行的保費收取及理賠支付。同時，也向潛在投標人提供保單基本情境下未來現金流量的數據，而非任何現值化的精算價值報告，在此基本情境中所假設的理賠現金流量，補償基金亦會依照法定的補償範圍內設定合理的利用率，一旦超過就會依法削減給付，同樣的，並無實際超出利用率的情況。

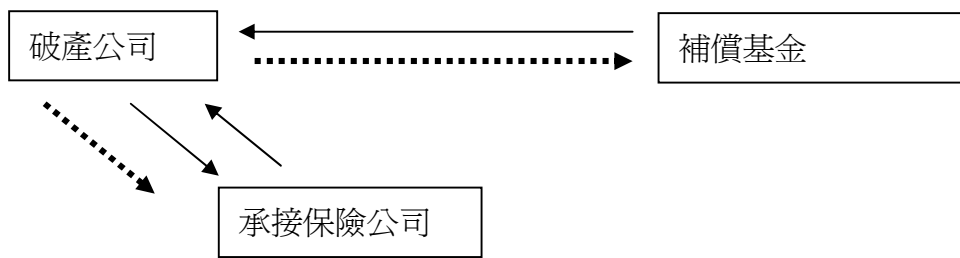
投標人則根據所提供的保單現金流量，參考市場資訊提供一組不同期限，不同利率的政府債券系列組合需求進行標價，即投標人自認如能獲得這樣具流動性的政府債券組合，便能產生類似保單之現金流量，解決其資產面資產配置的問題，且政府毋須支付大量補償現金。投標人得標後，清理人則依所提需求之政府債券組合於交易日一起將個人壽險及健康險保單轉移給投資人。

在處理過程中特別的經驗包括：

- ① 得標人要求所有壽險既有的再保險合約都必須中止，此點後來由清理人代為進行處理。

- ② 在完成交易前，該公司旗下的業務員紛紛投入另一間提供優渥待遇但失敗的投標人，對於此點得標人主動尋求主管機關協助，訂定特別的保障協定，以免交割時引起相當密集的換約訴訟。
- ③ 本案最大特點由於是以政府債券交割，其中的流動風險、利率風險和資產定價風險頓時消失，即從根源解決而無所謂價格爭議，資產品質也廣為保險公司接受。
- ④ 由於得標承接的保險業者一下子獲得大筆政府債券，在其他私自籌募資金的抵押保證上具充份說服力，也吸引許多投資人投資該保險公司，進而強化其資本。
- ④ 由於得標承接的保險業者宣布，就算實際理賠超過清理人設定的利用率，他們仍將全額支付所有死亡和撫卹保險金，此點立即創造出該公司的顯著商譽和正面的接管形象。
- ⑤ 預估的保險理賠利用率成功地扮演價格調整機制，降低部份的現金或政府債券支出。
- ⑥ 由於本案有建立一專門的代管基金，對於所有支付所需的行政管理費用皆已詳實記錄，承接的保險業者亦承諾於交割日之後返還此筆費用予補償基金。

Robert 提供了各角色的關係圖如下：



(業務通路轉賣給其他通路公司)

### (3) 個人遞延及即期年金保險

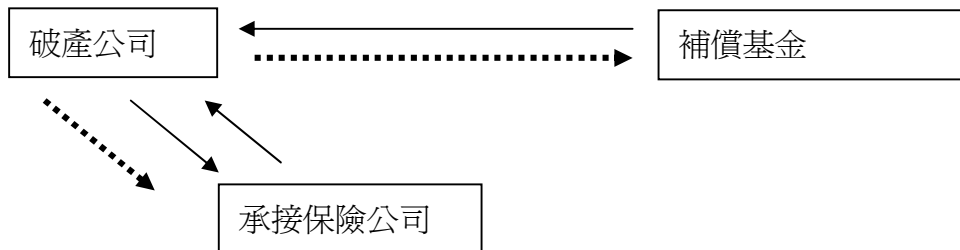
接管後對於個人遞延及即期年金保險亦比照個人壽險及健康險的保單，但是由另一間保險公司承接個人遞延及即期年金保險業務，同樣地，在基本情境中所假設的年金支付現金流量，亦會依照法定的補償範圍內設定合理的利用率，只是在此個人年金的業務內改成以月為計算基礎，同樣的，清理人亦用此利用率作為議價時的價格調整機制。

在處理過程中特別的經驗包括：

- ① 保戶最終得與具清償能力的保險公司處理保單，獲得正常的資產管理資訊。
- ② 特別與得標者訂定『立即處理條約』，即需要求接手的保險公司接受清理人能在交割日生效後，對如何部署如此大筆全部皆為支付現金的基金進行稽核，清理人即曾對即期年金，特別是聯合和最後倖存者年金的部分進行稽核。

- ③ 清理人每次對利用率作出放寬調整時，往往對承接的保險公司算是提供了一個『好消息』。

Robert 提供了各角色的關係圖如下：



#### (4) 團體遞延年金保險

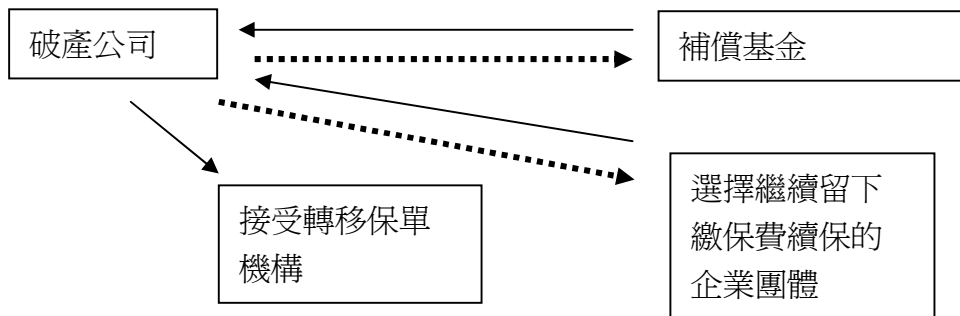
接管後對於這塊保單的處理最為費時，因為沒有業者對此部分提出有效的接手方案，所以就由清理人一件一件地解決，基於成本考量，若一件團體保單中有超過 60 位被保險人，則較容易出現願意承接的金融機構進行承接，清理人也向補償基金申請到足夠的流動資金以支應每張保單得以選擇繼續或轉移解約，直至滿期或剩餘的被保險人可以接受一次結清為止。

在處理過程中特別的經驗包括：

- ① 資訊管理系統的維護是一大挑戰。
- ② 清理人只維護合法的保單利益，對於法院判定的不當『利益』則不予維護，因位在審視保單的過程中發現，當中許多團體遞延年

金皆是避稅商品。

Robert 提供了各角色的關係圖如下：



### 資產管理方面

接管之初發現該公司固定成本過高，行政費用和相對品質和市場水準落差過大。

於是清理人將一般抵押貸款的管理以具競爭性的價格外包出去，至於一些有問題的抵押貸款則留下成立工作小組來專門處理。外包的抵押貸款管理者於貸款到期收回本金時可以有一次機會向清理人建議合適的再融資機會，如果再融資成功他們就會收到佣金，從而提升貸款回收率，進一步降低管理成本。清理人也將私募基金的管理外包予第三人，同樣地，有問題的私募基金則留下成立工作小組來專門處理。最終，清理人適時出售房地產資產管理業務和轉移房地產物業管理工作，盡量換成高品質的政府債券資產以交給得標者。

## 投資管理方面

這方面係指分離帳戶的投資基金業務，接管之初發現該公司有大量的分離帳戶業務，有專門的資產管理團隊進行維護，向保戶收取費用。由於此方面業務為獲利狀態，清理人盡量極大化其價值後售出。

## 清理結算方面

由於案例二中的壽險公司在美國的分支機構較加拿大本土還大，所以清理結算時需注意美國各州的法令，並注意公平與否。此外，對於資產置換成政府債券的工作盡量透過公開透明操作程序和多方溝通，以爭取政府債券發行部門的認同，甚至願意配合發行能提供希望的債券以利本案的資產置換。

## 其他方面

資料處理平台和關鍵員工亦是本案成功的重要因素之一，在有限的資源下要讓員工具備能將固定成本轉化為變動成本的能力，需要一定的知識水準與資訊操作介面。

### 3. 案例三：產險公司（似為 Reliance Insurance Company (Canadian Branch)）

此公司為一美國公司，跨國運作，加拿大有分公司，且其經營規模夠大並具有顯著的盈餘和資產。母公司出問題後，該分公司之大約一年之前有效保單開始依法律程序逕行自然滿期。該公司之母公司有與眾多再保險及保險代理人公司進行各種合作與交易，包括一項特殊保單，有超過 20,000 輛汽車投保，為特別延伸之汽車保修計劃，具有 3 年的低價優惠，再根據其承保年度透過再保險公司提供 50% 或 100% 的攤回計劃，補償基金對此只保證會退還終止到期前保險費的 70%。

對於是項特殊保單，原公司有提供保證續保服務，未經客戶同意不能取消，所以處理此間公司不會像其他產險公司保戶易於轉移且有一年自然滿期的好處，而且再保合約相當特殊，所以接管後只好讓其有效保單逐漸滿期以達退場目標。

在此案例處理過程中顯而易見，特別的經驗包括再保合約、母公司的營運策略、另外該公司的資訊平台和投資基金也有與眾不同之處。



## 六、論壇主題（四）：各國保險安定機制

本次論壇令人印象深刻的部份尚包括各國的保險安定機制，除馬來西亞與挪威之外，由於本基金另有研究案會對美國及德國先進國家進行更詳盡的保險安定機制的研究，故在此謹將馬來西亞與挪威的報告摘要說明如下：

### （一）馬來西亞

由於馬來西亞是一回教國家，所以該國國內的保險業有一部分與歐美國家相當不同，稱之為 Takaful，暫稱之為回教保險，由於歐美保險業具有理賠不確定性被視為賭博以及含有利息成份，因而違反回教教義。但由於保險具有整合集體資源以濟助需要幫助者之內涵，仍與回教教義之補償原則及共同承擔原則一致，故回教世界自然發展出因應回教世界需求的回教保險—Takaful，而各種型式之 Takaful，已施行於各回教社會達 1400 年之久。從商業運作模式的觀點，目前 Takaful 主要分為兩種經營類型，其一稱為「al Mudharaba Model」，施行於馬來西亞及遠東地區，其二則為「Wakala model」施行於中東地區。al Mudharaba Model 讓保險公司與保戶共享盈餘，其經營模式

為保戶所繳交之保費扣除管理費用後，進入 Takaful Pool Participant's fund，用於理賠及投資，Takaful 之營運者並針對投資表現與保戶分享利潤；Wakala model 之模式則先扣除股東應收取之經營費用及利潤後，進入 Takaful fund 用於理賠及投資，若 Takaful fund 產生盈餘，則歸保戶所有，股東不得分享，若 Takaful fund 虧損，則股東提供無息貸款填補損失，再由此後各年度 Takaful fund 之盈餘撥還股東。

#### 1. 馬來西亞存保公司背景簡介

馬來西亞原僅有存保公司(MDIC，於 2005 年成立) 職司存款保險保障業務，但該國政府之中央銀行 (Bank Negara Malaysia, BNM) 於 2008 年 10 月全球金融風暴後建議於 MDIC 現有架構下增設保險業賠付機制(Takaful and Insurance benefit Protection System，簡稱 TIPS)，合併原設置於央行之保險保障基金，藉以強化對保單持有人保障，並做為回教保險業退場、維持金融市場穩定相關配套措施。此項建議於 2010 年 12 月 31 日正式立法通過。該公司成立具有以下宗旨：

- (1) 提供每位存戶或保戶完整且公平的保障。
- (2) 避免民間業者業務競爭所造成的市場扭曲。
- (3) 降低逆選擇的投保動機。

(4) 對於經營不善的保險業者在考量成本效率前提下退場。

(5) 建立市場對於金融穩定的信心。

## 2. 制度建立之初所主要考量因素

馬來西亞存保公司政策與國際事務處處長 Ms. Yee Ming Lee 分享該公司於建置此項新保障措施時，曾針對會員制、保障額度、保障範圍、收費基準、基金管理、代位求償及回教保險之特殊性等重要項目皆歷經不少討論，截至目前為止仍在不斷檢討中，謹將其討論過之議題彙整如下表：

制度要項	考 量 因 素
組織型態	<ul style="list-style-type: none"><li>• 由同一機構負責銀行業存款保險與保險業 TIPS 究竟是否適當？</li><li>• 究竟要國家經營或由民間私人經營？</li></ul>
會員制度	<ul style="list-style-type: none"><li>• 會員機構應強制投保或自由投保？</li><li>• 會員機構除保險公司外，是否更應包含保險經紀公司及再保險公司？</li></ul>
保障額度	<ul style="list-style-type: none"><li>• 全額保障(full protection)或無額度限制(unlimited cover)？</li><li>• 若採限額則究竟應為共同分攤制(co-sharing)或一</li></ul>

	<p>絕對額度(absolute limit) ?</p> <ul style="list-style-type: none"> <li>• 係根據每張保單或每一被保險人為基礎進行保障額度設定？</li> </ul>
保障範圍	<ul style="list-style-type: none"> <li>• 以要保人或要保單位作為保障範圍分類基礎：即分為個人保單、中小型企業、大型企業集團？</li> <li>• 以產品別作為保障範圍分類基礎：即依據保險種類或保險利益？</li> </ul>
籌資方式	<ul style="list-style-type: none"> <li>• 公司運作的資金來源究竟應為事前收費制、事後收費制或平時應維持一定基金目標規模等？</li> <li>• 面對流動性需求時應由政府融資支援、向民間機構借款、或建立特殊籌資管道等？</li> </ul>
收費基準	<ul style="list-style-type: none"> <li>• 收費基準應依總保費、純保費、負債額度或經精算後所提存之準備金？</li> <li>• 收費基準應依採總量基準 (broad basis) 或限量基準 (narrow basis) (如僅限於所承保保單/保險給付/保障額度等)</li> </ul>
基金管理	<ul style="list-style-type: none"> <li>• 由單一基金統包或針對不同目的成立多個基金帳戶？</li> <li>• 若採多個基金帳戶，資金及費用配置基礎應如何</li> </ul>

	設定？
代位求償	<ul style="list-style-type: none"> <li>• 保障基金於清算賠付後是否可以取得代位求償權？</li> </ul>
回教保險之特殊性（即考慮對於伊斯蘭教法（Sariah）的遵循）	<ul style="list-style-type: none"> <li>• 對於違反教義的補償是否應予以避免提供？</li> <li>• 對於遵守伊斯蘭教法的回教保險是否需成立獨立的基金以及投資管理？</li> <li>• 公司與遵守伊斯蘭教法的回教保險經營者是否應訂立專屬契約。</li> </ul>

### 3. 目前馬國國內共識（亦即 TIPS 制度成功應有之關鍵要素）

- (1) 強制執行：所有會員機構應強制投保。
- (2) 公司治理：應建制公司治理機制，包括董事會成員及基金管理階層之分層負責制度。
- (3) 資金籌措：平時應擁有足以處理要保機構倒閉案所需資金，面對流動性風險時政府應予以財務援助、同時亦可對外借款或成立特殊管道籌資。
- (4) 與利害相關者之關係：應與主管機關和金融安全網的成員密切合作。
- (5) 處理與及早介入權限：應具有充分的及早介入與處理權限，必要

時可設立過渡型機構。

- (6) 溝通機制與民眾宣導：積極對消費者宣導及教育，以提高公眾意識。
- (7) 法律保障：應對員工於執行公務並盡善良管理人義務時，給予充分法律保障。
- (8) 穩定的保障結構：維持金融穩定以度過金融危機時期，必要時得擴大保障範圍，包括非要保機構、保額及要保項目。

#### 4. 目前 TIPS 保險保障機制之重要項目如次：

##### (1)會員制度

凡是依 1996 年保險法核准設立、領有執照、在馬國境內經營人壽保險及產物保險之保險公司皆依 1984 年回教保險法領照設立並經營回教保險（General Takaful or Family Takaful）業務者，依法均應加入馬來西亞存保公司成為其會員機構。至於再保險公司、專屬自保保險業者及專業承保者(Financial guarantee insurers)、境外保險公司、保險經紀公司及國際回教保險經營者，則非要保機構。

##### (2)保障對象

凡購買合格獲保障之保險或回教保險之保單持有人，包括馬來西

亞公民、曾為馬來西亞公民但後來移民至國外者、外國人居住於馬來西亞者、外國人居住於馬來西亞但後來返國者，均為保障對象。

### (3)保障項目

#### ① 人壽保險

除投資連結保單(但有關保單下的保險及回教保險部分在此制度下係受到保障)及以外幣為面額的保險及回教保險保單外，原則上每一合格之個人及團體保單均受承保，個別項目之保障額度詳如下表：

獲保障項目	最高限額(個人或集體保單/計畫)
死亡及相關利益	RM 500,000
永久失能	RM 500,000
重大疾病	RM 500,000
滿期價值(不包括投資連結保單的投資部份)	RM 500,000
解約金價值	RM 500,000
累積現金紅利	RM 100,000
失能收入	每個月RM 10,000

年金收入	每個月RM 10,000
醫療費用支出	100%實報實銷
退還預付保費	100%預付保費

## ② 產物保險

獲保障項目	最高限額(保單/計劃)
財物的損失或毀壞	RM 500,000
死亡及相關利益	RM 500,000
永久失能	RM 500,000
重大疾病	RM 500,000
失能收入	每個月RM 10,000
醫療費用支出	100%實報實銷
退還預付保費	100%預付保費
有關合格第三者之賠償索償亦同上表	

## (4) 歸戶原則

每一張保單之每一位被保險人或每一被保財物標的在同一家保險公司因同一保險事故(如：死亡)得請求之金額，始分別受到上表額度之保障。

## (5) 基金管理



為累積充足的理賠基金，馬來西亞存保公司採事前徵收與事後分攤混合制向要保機構徵收保費，惟以事前徵收為主；其中事前徵收之年保費主要用於支付存保公司日常營業費用並累積存保基金，至於事後分攤主要彌補未預期損失及重建存保基金之需，另倘有緊急流動性需求，存保公司得向政府申請緊急融通。目前馬國存保公司理賠基金共分：一般存款保險、回教存款保險、傳統人壽險、傳統產物保險、回教人壽險與回教產物保險等 6 個帳戶基金，帳戶之間不得流用。

#### (6) 收費基準與費率

至於收費基準部分，人壽保險係採前一年底精算後之保險責任準備金總額為基準，產物保險則為前年度純保費收入總額為基準，至於費率部分，目前採固定制，人壽保險與產物保險費率分別為 0.06% 及 0.25%，該公司計畫於未來實施差別費率。

#### (7) 代位求償權與一視同仁

為降低承保風險以減少未來處理成本，該公司之保險保障基金於清算賠付後可以取得代位求償權，並對所有保戶一視同仁，不因其投保金額多寡而有差別待遇以強調其公平性。

## (二) 挪威

挪威自 2007 年始開始逐漸建立起自身的保險安定機制，2009 年起陸續發布相關重要報告，僅限於紙上談兵，由於挪威並非歐盟的成員之一，但地理位置十分相近，所以一定程度受歐盟 Solvency II 規範之影響，故挪威於 Solvency II 頒布後，在 2010 年發布回應報告，截至 2012 年，挪威國內尚有眾多討論，但由於尚無實際退場案例發生，仍處於觀望歐盟發展並隨時調整的階段，謹將其會議資料列為附件三供後續研究者參考。

## 七、結論與建議

本次論壇及參訪行程，可謂圓滿達成任務。主要結論與建議如下：

1. 加拿大預警制度中填報資料以資料庫的技術統籌管理：本次拜會 OSFI 了解到加拿大預警制度中不論是監理方面資訊或預警方面資訊十分扼要但皆重要，並不會讓業者填報過多不必要的資訊，且填報方式以 Excel 申報格式對業者而言相當簡易，填報後監理單位以資料庫的技術統籌管理，讓主管機關易於擷取所需要的資訊，此點相當值得我國參考。
2. 加拿大預警制度中填報延遲及錯誤處罰架構值得參考：本次拜會 OSFI 了解到加拿大預警制度中有此一架構，相當值得我國參考，以提升預警資料之品質。
3. 加拿大存保的過渡銀行概念值得參考：之前於主管機關參與會議時有長官提過安定基金是否可設立類似銀行業過渡銀行機制的建議，成立過渡保險公司？另外在加拿大 Assuris 也有類似的過渡保險公司機制(CompCorp)，我國 2007 年中央存保亦通過立法程序完成過渡銀行設立及業務管理辦法，目前雖無實例，但相當值得安定基金參考，以爭取時間換取退場保險業保留資產之適當溢價以及適當處理退場保險業所承諾之

保險給付。

4. 加拿大的保險業退場處理經驗值得參考：本次收獲最大的就是這一塊，除了更進一步體認法院在接管過程中扮演的角色十分重要以及接管和賠付專業分工的重要性外，加拿大也提供了他們如何避開在財務精算方面買家會對於壽險公司折現率和投資報酬率方面的爭議的經驗；另外，將墊付辦法中所賦予的削減給付彈性透過保險理賠利用率（Utilization Rate）和精算技術反映在未來現金流量的預估上，成功地扮演與投標人協議時的價格調整機制，進而降低部份的現金或政府債券支出，也是十分重要的收獲；此外，特別的是，加拿大能作到政府部門在債券發行時的協助以及創造業者希望提升商譽進而買單或支付溢價的心態，以保障保險業退場機制尚未完善時期的保戶權益，非常值得參考。

## 八、參考資料

(1)參加加拿大人壽保險保障公司舉辦之「保險保障機制國際論壇：

提高保單持有人保障全球意識」國際研討會出國報告，楊靜嫻、

莊麗芳，中央存款保險股份有限公司，民國一百零一年元月。

(2) 參加加拿大人身保險保障公司（ASSURIS）舉辦之國際保險安定

機制論壇出國報告，黃仰嘉，行政院金融監督管理委員會保險

局，民國一百零一年元月。

## 附件一 拜訪加拿大金融機構監理總署之議程

### Visit OSFI by Taiwan FSC and TIGF November 22, 2011 pm 2:30 Agenda

#### **1. Composite Risk Rating and Intervention Guide establish issues**

For example, if we want to set up an early warning system in our country like CRR and Intervention guide of Canada, how to deal with the companies initially that their equities are already below than zero, but still running new business on the market?

#### **Sub question:**

1. We would like to ask how insurers report their business data and financial figures to OSFI, such as data category, computer files, report frequencies, table forms, internet or email transmissions (through closed network or certificated line?), what units or organizations in charge to collect and analyze those information? How they analyze? Is there a supervisory database system like NAIC of US? For example, AVS of SVO ([http://www.naic.org/store\\_avs.htm](http://www.naic.org/store_avs.htm)), to assess the asset values hold by insurers that without market values.
2. Is there many conglomerates operate insurance business in Canada? Is there any different supervisory philosophy between individual insurance companies and insurance companies belong to conglomerates, and any differences between foreign insurance companies and local insurance companies? If the differences exist, what's their theory or legal basis?
3. Does OSFI need any fund or budget to implement the early warning system? Is it from government budget or specific fees paid by insurers annually? Which institution monitors the payment process?
4. How OSFI implements the penalty and appeal system of insurance company if OSFI find something wrong through the early warning system, and what's the difference with other countries, any guilty negotiation exist in the system?
5. OSFI supervises insurance company's financial soundness and capital adequacy through early warning system, but how to supervise the business portion?

For example:

- (1) Complaints from distribution channels or policyholders, still follow risk-focus principle?
- (2) Does Canadian Insurers need to file insurance products to OSFI before the product launch? Any interest rate risk exists in Canadian insurance products that approved by OSFI?

- (3) Does Canadian Insurers need to disclose it's assets allocation? Any investment guideline of insurers published by OSFI?

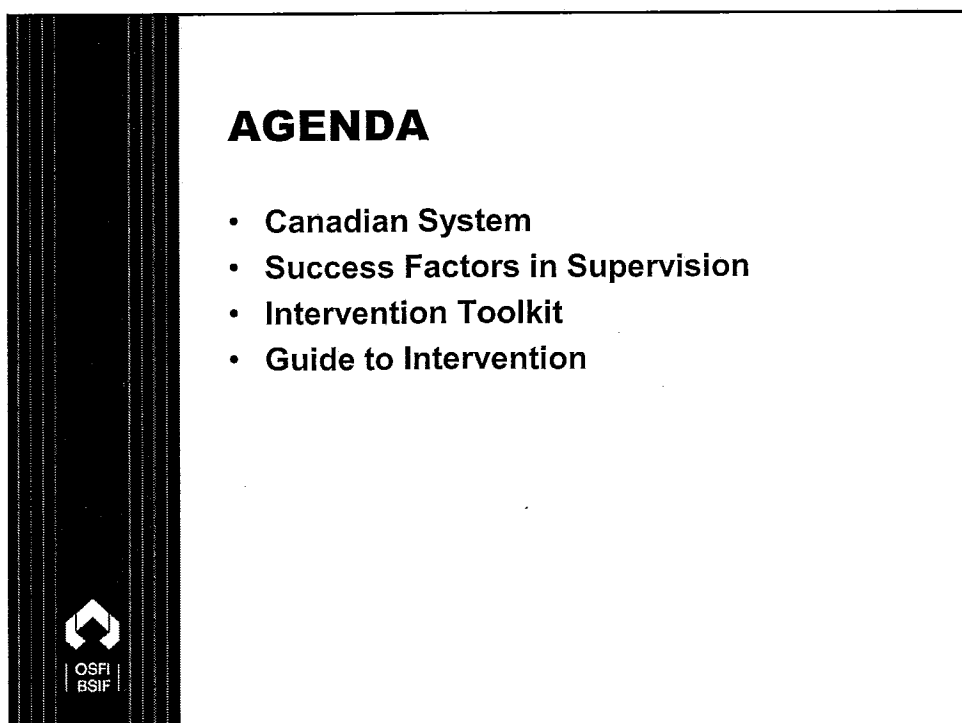
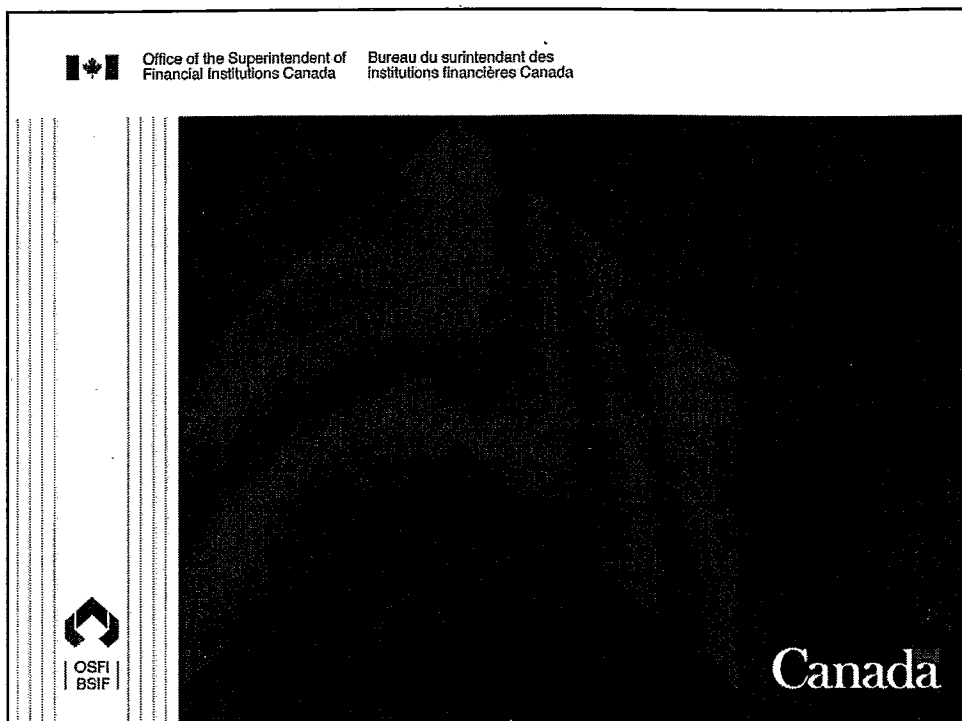
## **2. Taking over status issues**

We noticed that there are 0-4 intervention stages, we would like to discuss with OSFI what's the role or responsibility of OSFI after all intervention stages done or useless (ie. under the taking over status), for example, if an insurer lose it's huge amount of capital suddenly (like AIG) under out of expected conditions that can't prevent from Composite Risk Rating system and Intervention Guide, and taking over action must start right away.

### **Sub question:**

1. Under OSFI's view, how long a company taken over by Assuris/PACICC should complete their asset liabilities transfer or taking over period?
2. We noticed that there are a kind of entity called "bridge company" exists in Canadian system in order to collect the long term assets and liabilities not easy transferred. If there are funding gap not easy collect from industry, OSFI will compensate the funding gap by government or tax revenue? Or there any backup funding resources can be applied?
3. If OSFI needs to adjust the regulation, how OSFI interact with the Parliament, the Ministry of Finance, Association of Life/Nonlife Insurance? For example, how OSFI starts the trigger of Insurance Companies Act amendments, for example, how the proposal, deliberation, and publish process? How OSFI promulgate the new regulations? Is through Parliament, the Government House, Prime Minister's Office or the Ministry of Finance?
4. What's the definition of "Restructure" in Canada, any successful restructured case in the past? What's the successful factors about restructure?

We know the visiting time is limited, the sub questions we listed intend to help us focus our conversations only. They may not have the right answers, but they are the challenges we faced in our country. Due to the successful supervisory system of Canada, we are concerning how to enhance the cooperation and share supervisory experiences or information with OSFI, for example, our FSC (Financial Supervisory Commission) looking forward to send our members or delegates to join OSFI's training or daily practices, hope we can have opportunities to establish an insurance supervision cooperation mechanism in the future.





## The Canadian System

- At the federal level, regulatory oversight divided between:
  - OSFI (Prudential regulation & supervision)
  - CDIC/Assuris (deposit insurance, policy continuation)
  - DOF (policy / legislation)
  - BOC (LLR & payment system oversight)
  - FCAC (consumer issues)
- Each agency has a well defined mandate with minimal overlap
  - Limited scope for conflicting priorities within an agency
  - Various mechanisms to facilitate coordination, and balance tradeoffs:
    - FISC
    - CDIC/Assuris Boards
    - SAC



## Canadian System - Assuris

- **Private, not-for-profit association**
- **Funded by life insurance industry**
- **All companies selling life insurance in Canada must become Members**
- **Combined Public/Member governance**
- **Close relationships with regulators**
- **Focus on protecting policyholders**



## Critical Success Factors in Supervision

- Mandate ✓
- Independence
- Intervention Powers ✓
- Methodology
- Communication ✓
- Resources
- Structure

*CDIC → Exam on site*



## The OSFI Act

- Determine whether institutions are in sound financial condition
- Take necessary corrective measures in an expeditious manner
- Promote the adoption of policies and procedures designed to control risk
- Monitor and evaluate system-wide events or sectoral issues that could have a negative impact



## The OSFI Act cont'd

- Strive to protect the interests of policyholders *shareholder*
- Regulated institutions can experience financial difficulties which can lead to their failure



## Communication

- Bi-lateral exchange of information
- No-surprises
- Reporting to senior management and Board *(twice a year)*
- Confidential *(helpful)* → *disclosure requirement (financial.)*



## Intervention - Overview

- Assign intervention rating
- Early intervention
- Intervention measures are flexible
- Both formal and informal powers
- Consider unique circumstances of the institution
- Guide to Intervention *not to court*



## Intervention Toolkit – Informal Powers

- Tell to stop growing business until problems are fixed
- Require more stress testing
- Require institution to hire expertise in a particular area to manage risk
- Strongly encourage management to spend money on their data systems so they can more clearly see risks they have taken on
- Ask for a third party review with scope set by OSFI



## Informal Powers cont'd

- Reduce permitted leverage ie cap growth
- Capital penalties
- Intervene - stage

*effective tool!*



OSFI  
BSIF

## Intervention Toolkit - Legal Powers

- Expand the scope of the audit
- Order the auditor to proceed with a special audit
- Remove the auditor
- Specify actuarial practice and provide directions to the actuary
- Appoint an actuary to conduct an actuarial valuation or special review

*RSA do this*



OSFI  
BSIF

## Legal Powers cont'd

- Call a meeting of the institution's board of directors (*Canadian board*)
- Disqualify or remove a director, senior officer or chief agent *§29*
- Require the institution to increase its capital or assets
- Give various approvals (investments, ownership, amalgamation, etc.) subject to conditions and undertakings



## Legal Powers cont'd

- Impose restrictions on self-dealing (designate a person as a related party)
- Impose conditions on the Order to Commence and Carry on Business
- Enter into a Prudential Agreement (to maintain or improve safety and soundness)
- Issue a Direction of Compliance (to cease or prevent unsafe or unsound practice)

→ *OSFI can override no more than section*

→ *Certain line of business not allow to proceed.*



## **Guide to Intervention**

- **Stage 1 – Early Warning**
- OSFI has identified deficiencies in the institution's financial condition, policies or procedures or the existence of other practices, conditions and circumstances that could lead to the development of problems described at Stage 2 if they are not promptly addressed



## **Stage 1 – OSFI Activities**

- Meet with management and board
- Escalate monitoring
- Conduct enhanced or more frequent reviews including by OSFI specialists
- Inform Assuris
- Meet with Assuris several times a year
- Implement any of a number of intervention measures



## **Stage 1 – Assuris Activities**

- Independent analysis of company information
- Discussion and sharing of concerns



## **Guide to Intervention**

- Stage 2 – Risk to financial viability or solvency
- The institution poses material safety and soundness concerns and is vulnerable to adverse business and economic conditions. OSFI has identified problems that could deteriorate into a serious situation if not addressed promptly, although the problems are not serious enough to present an immediate threat to financial viability or solvency.





## **Stage 2 – OSFI Activities**

- Follow up supervisory reviews more frequently or enlarge scope
- Require outside parties to review financials or actuarial reserves
- Keep Assuris informed of results
- Develop a contingency plan in consultation with Assuris



## **Stage 2 – Assuris Activities**

- Analysis and discussion of supplementary information
- Hiring of consultants, if needed
- Preliminary restructuring plan



## **Guide to Intervention**

- **Stage 3 – Future financial viability in serious doubt**
- **OSFI has identified that the institution has failed to remedy the problems that were identified at Stage 2 and the situation is worsening. The institution has severe safety and soundness concerns and is experiencing problems that pose a material threat to its future financial viability or solvency unless effective corrective measures are promptly undertaken.**



## **Stage 3 – OSFI's Activities**

- **Direct external specialists to assess**
- **Enhance scope of business restrictions**
- **Expand information to be submitted**
- **OSFI staff to be present to monitor situation on an ongoing basis**
- **Expand contingency planning**
- **Communicate with Board re resolution options**
- **More frequent discussions with Assuris**



### Stage 3 – Assuris Activities

- Designation as “Troubled Member”
- Cost Estimates for providing Assuris Coverage
- Detailed restructuring plan
- Potential funding for solvent resolution
  - No phoenix
  - Lower cost
  - OSFI support
  - Assuris repayment priority



### Guide to Intervention

- Stage 4 – Non-viability/insolvency imminent
- OSFI has determined that the institution is experiencing severe financial difficulties and has deteriorated to such an extent that:
- -it failed to meet regulatory capital and surplus requirements in conjunction with an inability to rectify the situation on an immediate basis;
- -the statutory conditions for taking control have been met; and/or
- -it has failed to develop and implement an acceptable business plan, resulting in either of the two preceding circumstances becoming inevitable within a short period of time



## Grounds for taking control:

- Insufficient assets
- Failure to pay liabilities
- Improper accounting of assets *(big one issue)*
- Insufficient regulatory capital
- Failure to comply with an order to increase capital or assets
- Any other prejudicial state of affairs

NB Power to close with positive capital



## Stage 4 – OSFI's Activities

### Voluntary Dissolution

- ✓ Monitoring of the company's liquidation and dissolution by the Court

### Take Control and Request Liquidation

- ✓ Control of Assets
- ✓ Control of the institution
- ✓ Liquidation



## **Stage 4 – Assuris Activities**

- Finalizing liquidation contingency plan for the specific situation - primary goal is speedy transfer of policies
- Coordinating court documents, communication plans, etc.
- Board formalities to provide Coverage
- Planning for assessments to Members to fund anticipated costs



## **Winding Up and Restructuring Act**

- Governs all insolvencies of financial institutions
- Gives policyholders priority over other creditors
- Judicial discretion important



## Questions ?



## 附件二 保險業的退場處理經驗之原文課程資料

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Bob is Managing Director, Ithaca House, and advisory firm focused on multi-national corporate transactions of financially challenged financial institutions, particularly insurance and deposit taking institutions and providing strategic and intervention assistance to prudential regulators.

Bob recently retired from KPMG LLP as a senior partner in the transaction services group. During his career with KPMG he was based in Vancouver and Toronto. During his last 6 years with KPMG he served on its Board of Directors including serving as the Chair of the Board and as member of the KPMG Americas Board of Directors. During his tenure he led a number of major assignments mainly in the financial services sector. While these organizations were primarily centered in Canada, they usually involved one or more of USA, UK, Continental Europe, offshore jurisdictions and Asia. His more than 40 years experience in structuring and executing distressed transactions including extensive experience in insurance, real estate, mortgage loan portfolios, private placements, forestry and oil and gas. He was the lead partner on the liquidations of:

- (1) Sovereign Life
- (2) Confederation Life
- (3) Reliance Insurance Company (Canadian Branch)
- (4) Canadian Millers' Mutual Insurance and on the restructuring of Central Capital Corporation
- (5) Coulter Financial Group of Companies
- (6) Telesystem International Inc.
- (7) Sulpetro Limited

and

(8) United Canso Oil & Gas Ltd

Bob's advice and counsel is regularly sought by Financial Regulators on transactions, reorganizations, governance, and capital matters and by clients to assist in structuring acquisitions and divestitures.

Bob is a past President of INSOL International, past Chair of the Canadian Association of Insolvency and Restructuring Professionals, Past President of the Insolvency Institute of Canada and a member of the International Association of Insurance Receivers, INSOL International, American Bankruptcy Institute, Institute of Corporate Directors and Canadian Institute of Chartered Accountants.

## **Resolution**

### **I. Background**

#### **1. Prior to formal insolvency**

- (1) Scope of regulatory intervention "tools"
- (2) Compensation Fund
  - a. Access to information (regulatory restriction)
  - b. Ability and capacity to commit to a resolution plan outside of formal proceedings
- (3) Ability to effect resolution plan or transaction
  - a. Legislative authority or moral suasion

#### **2. Selected insolvency principles**

- (1) Policyholders and insureds are "creditors".
- (2) Recognition of creditors' rights & absolute priority by class.
- (3) *Pari Passu* treatment of creditors within a class.
- (4) Equitable distribution of assets.
- (5) Interest stops "rule"
- (6) Provision for timely, efficient & practical resolution
- (7) Balance

#### **3. Legislative framework**

- (1) Special legislation or provisions for insurance companies
- (2) Role & obligations of "office" holder
- (3) Role of Court
- (4) Compensation Fund



- a. Court standing – promoter or advocate or interested party
- (5) Regulator Authority
  - a. Court standing – promoter or advocate or interested party
  - b. Court’s expectations
- (6) Provisions which authorize the execution of a plan or transaction
  - a. Tests of fairness and equity
  - b. Necessity of policyholder consent or approval
  - c. Ability to modify policy terms
  - d. Proportional reinsurance
  - e. Timeliness of process

#### **4. Compensation Fund Attributes**

- (1) Pre-fund vs. post funding
- (2) Participation “triggers”
- (3) Capacity to cover potential shortfall
- (4) Specific design features (e.g. required cancelation of policies or provision of support to an existing entity)

#### **5. Activist Stakeholders**

- (1) Policyholders
  - a. Expectation of policyholders including by type of policy
  - b. Large or sophisticated policyholders vs “consumer”
  - c. Legislation impacting actions of policyholder (e.g. USA – ERISA)
- (2) Ordinary creditors or shareholders
  - a. Priority and expected recovery
  - b. Role of distress “investors”

#### **6. Regulatory approvals**

- (1) What transactions are “subject to”
- (2) Who obtains approval
- (3) Timing
- (4) Special rules for “foreign” participants?

## **II. Determinates of Approach**

### **1. Economic Climate**

- (1) Economic activity (where in the cycle)
- (2) Interest rates – direction, level and spreads
- (3) Liquidity
- (4) Access to capital
- (5) Rating agency expectations and influence

(6) Local “investment opportunities or alternatives”

## **2. Cause of failure**

(1) Liability Driven

- a. Underwriting
- b. Product pricing
- c. Investment guarantees
- d. Catastrophic event

(2) Assets

- a. Quality and/or market perception thereof
- b. Concentration (e.g. real estate)
- c. Level of loss given default
- d. Underwriting

(3) Liquidity

(4) Capital

(5) Management

## **3. Attributes of business**

(1) Life or long term vs. property & casualty

(2) Life:

- a. Mortality vs. investment vs. accident & sickness or combinations thereof
- b. Group vs. individual
- c. Branded products (association)
- d. Pension – Disability
- e. Competing “products”

(3) Property & Casualty

- a. Property vs. liability (occurrence vs. claim made)
- b. Personal lines vs. commercial
- c. Warranty type products

## **4. Assets**

(1) Ease of pricing

(2) Market value premiums (value over par)

(3) Pricing spreads against risk free rate

(4) Quality

(5) Market appetite

(6) Transfer or assignability or reinsurance

## **5. Reputation of company**

(1) Approach to risk and risk management

(2) Underwriting

(3) Service standards

- (4) Quality of information
- (5) Employee qualifications

#### **6. Accounting, actuarial & regulatory**

- (1) Approach to accounting for a “transaction”
- (2) Speed of regulatory approval
- (3) Capacity of compensation fund

### **III. Potential Challenges**

1. En bloc vs. segmentation approach
2. Availability of assets to fund transaction
3. Confidence in ultimate asset realization value
4. Confidence in ultimate recovery level by class of creditor
5. Separation of liability risk and its pricing from asset pricing
6. Location of information and records
7. IT system compatibility
8. Acquisition appetite of existing competitor
9. Ability to use purchase price adjustment mechanisms
10. Regulatory restrictions
11. Litigation environment
12. Failed entity structure
  - (1) Local or multi-national
  - (2) Branch vs. subsidiary
13. Cost of administration (going concern vs. gone)
14. Ability to convert fixed or step costs into variable costs (function of volume and complexity).
15. Ability to offer representation and warranties in any specific transaction or ability to create mechanisms to mitigate transaction risk to both parties.

### **IV. Themes**

#### **1. Life Companies**

- (1) Long term business has value and can be realized
- (2) Fee “business” increasingly of value (such as deferred annuity)
- (3) Short term business – runoff

#### **2. Property & Casualty**

- (1) Personal lines might have “renewal” rights value
- (2) Commercial lines best suited for “scheme of arrangement”
- (3) Assumption transactions difficult but not impossible

#### **3. Assets**

- (1) Assets that have a liquid and free market most likely to be capable either “transfer” or “conversion to cash”
- (2) If market falling – strategy likely “hold and sell as market turns”
- (3) If market stable or rising – strategy likely “orderly realization”
- (4) If interest rates have fallen – “hold” likely best strategy to realize premium
- (5) Outsourcing of asset management legitimate and value added option
- (6) Acquiring companies believe they are better than “vendor” at investing and managing assets.

## V. Examples

### Example 1: Life Insurance Company

#### 1. Characteristics

- (1) Relatively small market share – limited interest by competitors
- (2) Individual business (essentially) – full range of products
- (3) Distribution
  - a. Career (dedicated) agents
  - b. General Agents and Managing General Agents
- (4) Asset quality questionable
- (5) Litigious shareholder

#### 2. Solution

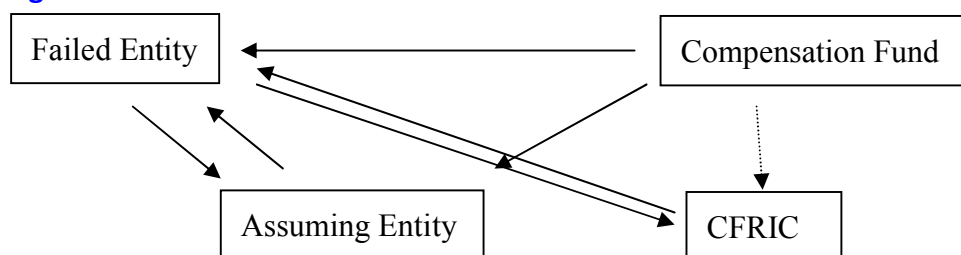
- (1) Proportional re-insurance transaction for all but small block of creditor protection policies at greater of compensation fund coverage levels or 90% of benefits.
- (2) Good quality or acceptable assets transferred to assuming insurer with balance of “price” satisfied by reinsurance treaty from regulated insurance company, which was wholly owned by the compensation fund (“CFRIC”, Certified Financial Re-Insurance Company), plus the amount directly from the compensation fund for difference between 90% and coverage limits.
- (3) Transfer of all remaining assets to CFRIC except those they elected to leave in liquidation with a call on proceeds (toxic asset protection)
- (4) CFRIC indemnified Liquidator to enable funding for ultimate assumption of creditor policies.
- (5) Temporary ability of sales force to sell products of others coupled with “incentive scheme”.

#### 3. Issues

- (1) Only one credible bidder for business
- (2) Pricing of ultimate value of assets (no independent exposure to the market)

- (3) CFRIC's ability to have reinsurance qualify with little or no capital requirement to assuming company
- (4) Maintaining sales force pending announcement of a transaction and then their acceptance of assuming company and its compensation program.
- (5) Court Approval
  - a. Legislation did not require the approval by policyholders, only the court
  - b. Appeal of approval order by shareholder
- (6) Protection of Liquidator

#### 4. Figure



### Example 2: Life Insurance Company – multi-national

#### ■ Liabilities

##### 1. Characteristics

- (1) Multi national operators conducted through both branches and subsidiaries.
- (2) No acceptable offer for the whole of the enterprise prior to failure nor any likelihood of one after failure.
- (3) Both deferred and single premium immediate annuities a significant component of the liabilities
- (4) Group included
  - a. Life and health business significant and a “vanishing asset” coupled with limited time for purchaser due diligence and pricing of existing disability liability.
  - b. Group registered deferred annuity represented over 25% of liabilities
  - c. Institutional segregated funds and asset management relationships (redemption of real estate fund frozen)
- (5) Individual included
  - a. Life and disability
  - b. Deferred annuities (GICs)
  - c. Immediate annuities
- (6) Litigation uncertainty over entitlement to assets arising as a result of use of overall cash management system.
- (7) Uncertainty economic climate at commencement of proceeding

- (8) Assets:
- a. Over 70% in mortgage loans, real estate linked private placements, infrastructure private placements, real estate and interest in real estate joint ventures and segregated funds.
  - b. Interest rates had declined since placement of majority of fixed income investments resulting in a value/pricing “premium” over par.
  - c. Company reputation as underwriter of mortgage loans uneven.
  - d. Many of the mortgage loans had loan to value ratios and/or debt service coverage which were out of sync with current underwriting standards and/or regulatory requirements notwithstanding they continue to perform in accordance with their terms; hence loans were of interest to mainly high yield or “distress” investors.
- (9) Liquidity an issue at commencement of proceeding
- (10) Guarantee Fund potential short term capacity constraint
- (11) Ultimate realizable value of assets difficult to determine and quantum of claims to be satisfied, including special trust claims potentially having priority over policyholders, made determination of ultimate level of distributions to policyholders and creditors highly problematic.
- (12) High fixed cost operations especially in IT and asset management.

## 2. Solution

- (1) Group life & health
- a. To preserve the value of the business and stem loss of business agreed to pay all outstanding claims, subject to coverage limits and to pay all claims post commencement.
  - b. Sale of the “rights” to the business separated from seeking assumption of the existing disability liability.
  - c. Structured sale of business to allow for transfer of business to new insurer over a period of approximately 12 months with assuming insurer taking full responsibility for any claim arising after the commencement of proceedings in exchange for all premiums earned and adjustment for administration cost etc. coupled with the hiring majority of existing staff and acquiring system software etc.
  - d. Successful acquirer announced within approximately 10 days from failure and closing with 45 days of commencement.
  - e. Ultimate agreements included liquidator having right to put pre-existing liability to insurer allowing block of business to stabilize enabling more accurate determination of “liability to be assumed” and liquidator to build cash resources.

- f. New insurer managed existing liability block including disputed claims for a fee.
  - g. Sale process realized significant value for the estate with a minimum payment and additional amounts a function the retained business plus sale of IT systems.
  - h. Result was over 1,000,000 individuals covered by the group plans with a new insurer.
  - i. Funds realized, together with another early sale of a subsidiary, created pool of funds to permit the offering of the individual life and disability blocks.
- (2) Individual Life & health
- a. Escrow fund for ongoing premiums post commencement and claims paid to guarantee fund limits or estimated realization percentage whichever was greater.
  - b. Potential bidders provided with “base cash flow data” but not any current actuarial report.
  - c. Bids were priced using a series of liquid Government bonds with differing maturities, which were selected so as to generate cash flows similar to the policy cash flows. Bidder specified the number bonds of each maturity to be delivered on closing.
  - d. Liquidator acquire portfolio of specified bonds so as to be able to deliver same on closing.
  - e. Initial transfer wa at estimated realization percentage together with the amount equal to the obligation of Guarantee Fund at that percentage.
- (3) Individual Annuities -- Deferred & Immediate
- a. Individual deferred and immediate handled using a similar approach
  - b. One insurer assumed the individual deferred and another the immediate annuities.
  - c. Initially the insurers managed the blocks of business
  - d. For individual deferred annuities the liability was assumed with the Liquidator delivering the equivalent of a reinsurance treaty which delivered “payment” at the maturity date of each individual policy.
  - e. Payment, made monthly, at the greater of the realization percentage times the liability and the Guarantee Fund covered amount. The assumption was effective from the commencement of proceedings.
  - f. The Liquidator put the insurer assuming the immediate annuities in funds on a monthly basis on a similar basis to the deferred.
  - g. In both cases the Liquidator had the ability to commute the “treaty”

(4) Group Annuities -- Deferred

- a. No insurer offered a cost effective proposal to either manage or assume the block of policies.
- b. Sponsors/certificate holders nominate institution to receive “transfers”.
- c. As each policy contained 60 sub policies or cells as each matured the amount of that cell was transferred to designated institution.
- d. At point where Liquidator had assembled sufficient liquidity each “individual” allowed to elect to continue with transfer as each cell matured or commute the remaining cells and transfer lump sum.

**3. Issues**

(1) Group life & health

- a. Maintaining the block of business during the “sale” process, especially where coverage was part of union agreements or other insurers were soliciting business, especially those who had been “frozen” out of the process. Part of the solution included provisions in initial order which sought the equivalent of injunctive relief.
- b. Creating a mechanism so that employers could fund the reduction in disability and other payments that were above the guarantee funds limits so that their employees or former employees would not claim against them as the initial realization percentage was set at 70%.
- c. Creating an adjustment mechanism to allow for the reduction in benefits to the estimated realization percentage and its potential upward adjustment including adjustment for the time value of money.
- d. Creation of an escrow fund for post commencement premiums pending further order of the Court and/or the transfer of the business to the new insurer.

(2) Individual Life & health

- a. Acquiring insurer wanted all reinsurance treaties associated with the life block of business terminated (which the Liquidator could implement).
- b. Former career agents had joined a “market entity” owned by a unsuccessful bidder and acquiring insurer sought new arrangement resulting in intense litigation prior to closing.
- c. By delivering only bonds which were “risk” free and very liquid asset pricing risk eliminated, thus allowing the assuming insurer to back liabilities with its “sourced” assets resulting in no diminution in price due to asset quality perception issues.
- d. Assuming insurer did acquire, in a separate transaction, a number of private placements (they already participated in many) at realistic and



attractive prices.

- e. Assuming insurer announced they would pay all death benefits in full, even where over coverage limits – created significant goodwill.
- f. Estimated realization percentage mechanism provided for delivery of similar bonds to the initial pricing except for those that had matured and then cash substituted.
- g. Effective date of assumption was the commencement of proceedings so all of premiums collected in escrow were transferred to the assuming insurer. Assuming insurer reimbursed Liquidator for administration of policy cost.

(3) Individual Annuities -- Deferred & Immediate

- a. Policyholders dealt with a solvent insurer
- b. Commutation of the “immediate treaty” presented the new insurer with how to deploy such a large quantum of funds (all payments were cash, not assets).
- c. Time between commencement and eventual commutation allowed for “audit” to be performed on immediate annuities particularly those with joint and last survivor benefits.
- d. Each time there was an upward adjustment to the estimated realization percentage it provided a “good news” story to the assuming insurer.

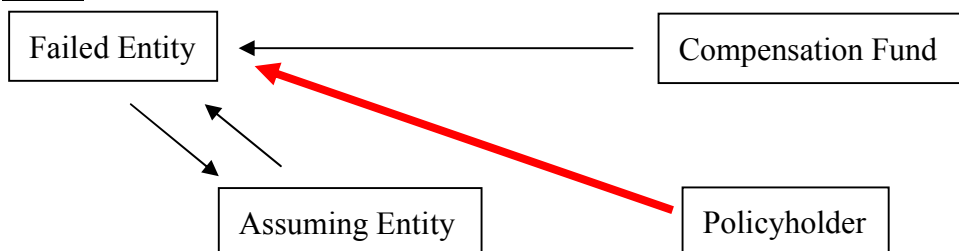
(4) Group Annuities -- Deferred

- a. Ensuring that “interest” component of policy was a policy benefit and not interest (Court approval obtained).
- b. Maintaining customer service capability and capacity including IT.
- c. Most of the policies were “tax products”; special ruling were obtained to streamline reporting requirements.
- d. When afforded the opportunity to have all of “cells” transferred vast majority continued with the transfer over time – resulting in the necessity of maintaining customer service capability longer than planned.

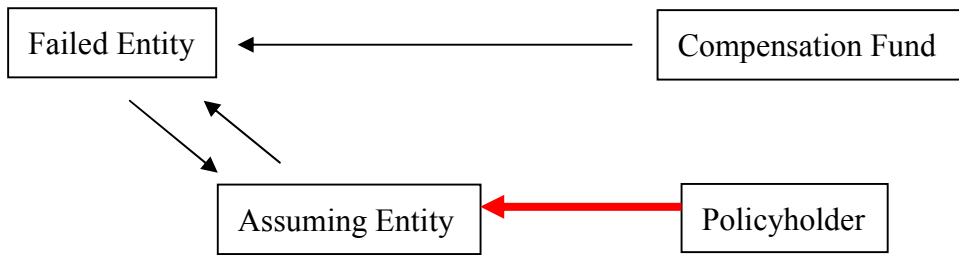
**4. Figure**

(1) Group life & health

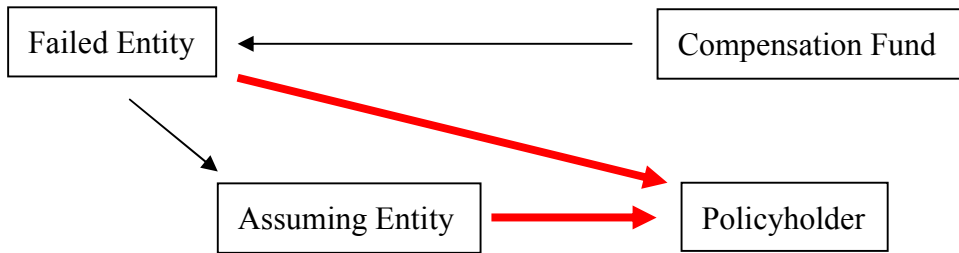
Step 1



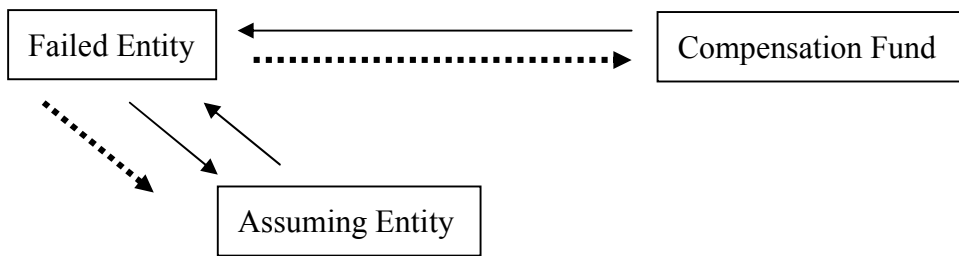
Step 2



Step 3

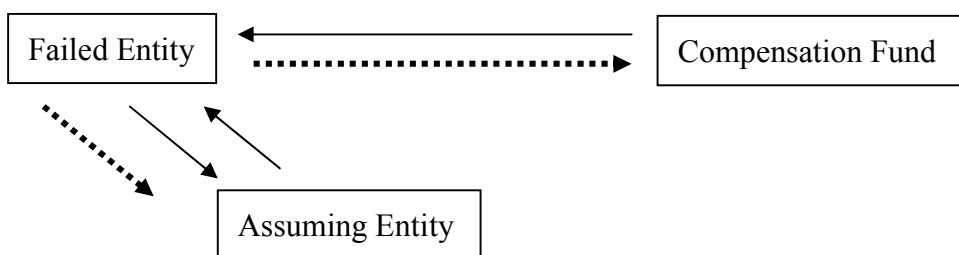


(2) Individual life & health

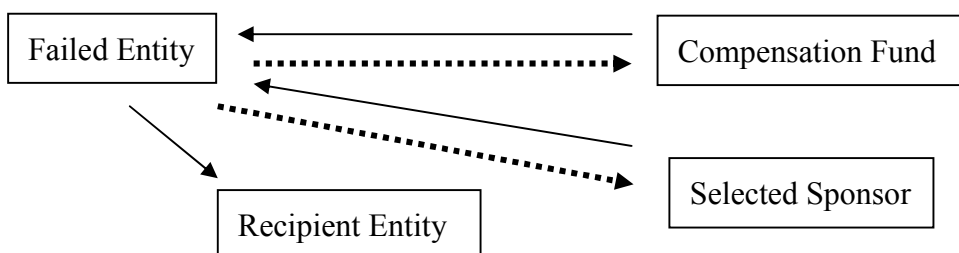


( Distribution sold to another distribution channel company )

(3) Individual Annuities -- Deferred & Immediate



(4) Group Annuities -- Deferred



## ■ **Asset Management**

### 1. **Characteristics**

- (1) Relative high fixed cost of operating.
- (2) Operating metrics and quality less than acceptable.

### 2. **Solution**

- (1) Outsourced mortgage loan administration for competitive fee and retained “work out” team to handle problem accounts.
- (2) Mortgage administrator had first opportunity to offer to refinance on maturity and if successful estate received a “commission” thereby further lowering cost of administration.
- (3) Outsourced management of private placements to third party administrator for a fee based on size of portfolio, again retaining work or responsibility.
- (4) Sold real estate property management operation and entered into management contracts for all investment real estate including that held in segregated funds.
- (5) Sold real estate asset management business to existing management team and structured fee based on exceeding performance thresholds.

## ■ **Investment Management (focus on segregated fund products)**

### 1. **Characteristics**

- (1) Investment management of large pooled segregated fund accounts and international investment product.
- (2) Mutual fund manager and administration activities.

### 2. **Solution**

Sold either the business and/or subsidiary or either the existing management or third parties early in the proceeding so as to maximize the value.

## ■ **Other**

Data processing facility and together with key staff sold with agreements put in place to provide operational access to allow to existing platforms to be accessed for considerable period while at same time converting fixed costs into variable costs based on usage together with access to key staff with knowledge of entities special platforms.

## ■ **Settlements**

- (1) Settlement of claims against home office by US branch (twice size of Canadian operation) with variety of adjustment and oversight mechanisms so as to ensure equitable treatment and ability to utilize local legislation to best advantage.

- (2) Settlement of litigation by treasury subsidiary (which had substantial third party debt outstanding) using sharing of proceeds in excess of specified thresholds and issuance of “hope” notes to create security capable of being traded.

### **Example 3: Property & Casualty**

#### **1. Characteristics**

- (1) Branch operation of US multi-national.
- (2) Branch had vest assets in jurisdiction and a significant projected ‘surplus’ for the size of operation.
- (3) Branch in ‘runoff’ for approximately one year prior to commencement of proceedings.
- (4) Significant percentage of the reinsurance was shared with the home office and other branches or operating subsidiaries.
- (5) Majority of policies were commercial with only personal lines ‘programs’ for MGA’s.
- (6) Special extended auto warranty program covering over 20,000 vehicles with low premium and up to 3 further years of coverage with reinsurance in place for either 50% or 100% depending on year of origination.
- (7) Guarantee fund also guaranteed 70% of premium refunds due on termination.

#### **2. Solutions**

- (1) No in-force policies terminated and if provisions for contractual renewal, recognized same (as distinct from usual practice of terminating on commencement of proceedings).
- (2) Attempted to enter into assumption reinsurance for both the extended warranty block of business and the balance.
- (3) Neither transaction able to be concluded due to inability to force the assignment of reinsurance treaties and therefore books of business continued in runoff.

#### **3. Issues**

- (1) Reinsurance treaties.
- (2) Home office control of IT platform.
- (3) Investment of funds.

### 附件三 會議資料--挪威保險安定機制

詳下頁資料



**FINANSTILSYNET**  
THE FINANCIAL SUPERVISORY  
AUTHORITY OF NORWAY

## Insurance Guarantee Schemes

### The Norwegian experience

1st International Forum for Insurance Guarantee Schemes  
Toronto, 24 November 2011

Ole-Jørgen Karlsen  
Senior Adviser, Head of Unit

## Outline

**FINANSTILSYNET**  
THE FINANCIAL SUPERVISORY  
AUTHORITY OF NORWAY

- The Norwegian approach
  - Pre 2007
  - Post 2007
- EIOPA's work in the field of Insurance Guarantee Schemes

## **What not to do**

### **The Norwegian IGS pre-2007**


**FINANSTILSYNET**  
THE FINANCIAL SUPERVISORY  
AUTHORITY OF NORWAY

- Insurance Guarantee Scheme for non-life introduced in 1998 Insurance law
- No further regulation on what and who to cover
- Insolvency case in 1993 (small-size marine and energy insurer)
- No legal basis for discriminating between policyholders
- All claimants and claims covered

## **IGS in Norway post-2007**

**FINANSTILSYNET**  
THE FINANCIAL SUPERVISORY  
AUTHORITY OF NORWAY

- Covers natural persons and small enterprises
- Non-life only
- Marine, energy, aviation, credit insurance excluded
- Covers a maximum of NOK 20 mill (USD 3,5mill) per claim
- 10/90% co-insurance (10% retention)
  - Not applicable to residential property and third party liability
- Levied ex-post on industry
- All domestic insurers as well as foreign branches covered
- Managed by the Financial Supervisory Authority



**Insurance Guarantee Schemes  
EIOPA Initiative**

**Ole-Jørgen Karlsen**  
**Chair, EIOPA Task Force on Insurance Guarantee Schemes**

Toronto 24 November 2011

**Outline** eiopa

- 2009: General recommendations on high-level principles for a possible IGS Directive from the EC
- 2010: Response to the EC White Paper on IGS
- 2011: Cooperation mechanisms between IGS and supervisors
- 2012: Report on winding up procedures
  - The role of Insurance Guarantee Schemes

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## 2009 Report

eioPa

### **I. Degree of harmonisation**

Rec 1: Minimum level of harmonisation

### **II. Role and ways of intervention of an IGS**

Rec 2: Last resort + flexibility

Rec 3: Trigger points left to member states

### **III. Coverage (policies, claims and claimants) of an IGS**

Rec 4: Life insurance + non-life

Rec 5: All natural persons

Rec 6: Extend to other claimants; national discretion

Rec 7: Value of claims based on contractual and legal basis

Rec 8: Unearned premium = voluntary / differentiate

Rec 9: Compulsory insurance = no co-payments

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## 2009 Report cont

eioPa

### **IV. Geographic scope of an IGS**

Rec 10: Home MS principle

### **V. Organisational structure and funding of an IGS**

Rec 11: Organisation left to individual member states

Rec 12: Payments as soon as practicable

### **VI. Pension sector**

Rec 13: Pension sector excluded from scope

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## 2010 Report

eiopa

Commenting on the European Commission's general policy outline

- A combination of criteria should be applied for determining eligible claims across Europe
- General warning not to copy and paste from the banking sector
- Leave room for national discretion; Europe too fragmented for a "one size fits all" approach
- Don't rush to settle funding criteria
- No good reason for excluding Motor Insurance

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## 2011 Report

eiopa

- Based on the mandate approved by the Management Board on 17 March 2011
- Analyses existing cross-border cooperation in the EU/EEA
- Summarizes current cooperation among IGSs in Europe, in the US, and European Deposit Insurers
- Provides recommendations for future European IGS Directive

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## Areas of cooperation

eiopa

- Cooperation between IGSs necessary to ensure consumer protection
  - general contact point for policyholders
  - language issues etc, calls for policyholders to be able to address their "local" IGS
  - provide practical assistance when dealing with insolvent firms:
    - how to claim for a refund?
    - what is covered and not?
- Costs must be addressed

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## Main recommendations

eiopa

- Voluntary arrangements are not enough
- Exchange of information must be addressed by the directive
  - e.g. a need to exchange early warnings in order to prepare for portfolio transfers
    - personal, medical and financial details of policyholders may be exchanged
- Legal certainty for the providing party must be ensured
- Provider should be able to instruct recipients, e.g by restricting onward recipients of information

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## How to cooperate?

eiopa

- Colleges of supervisors could be the platform for discussing IGS-related issues
  - IGSs could be invited to these discussions
  - this could lead to a common understanding of how to deal with particular scenarios

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## Ongoing work 2011-2012

eiopa

- Analyse issues like
  - Cross-border dimensions of winding up procedures?
  - How to reimburse policyholders in multiple jurisdictions?
  - Are there any roles for supervisors once a decision to wind up is taken?
  - What, if any, is the role of guarantee schemes prior to winding up?
  - What tool kits are available for guarantee schemes
    - Can they i.a. contribute to the continued existence of a company?
  - Any subrogation rights for the IGS?
    - Can this be safeguarded on a cross-border basis?

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## Further reading

eiopa

- Report 2009; general recommendations on IGS

[https://eiopa.europa.eu/fileadmin/tx\\_dam/files/publications/submissionstotheec/CEIOPS-DOC-18-09%20\\_Input\\_to\\_EC\\_work\\_on\\_IGS-approved\\_clean\\_.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/submissionstotheec/CEIOPS-DOC-18-09%20_Input_to_EC_work_on_IGS-approved_clean_.pdf)

- Updated inventory of Insurance Guarantee Schemes in place as of 2009:

[https://eiopa.europa.eu/fileadmin/tx\\_dam/files/publications/submissionstotheec/annex\\_2.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/submissionstotheec/annex_2.pdf)

- Report 2010 on the European Commissions White Paper

[https://eiopa.europa.eu/fileadmin/tx\\_dam/files/publications/submissionstotheec/20101123-CEIOPS-Comments-on-EC-White-Paper-on-IGS.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/submissionstotheec/20101123-CEIOPS-Comments-on-EC-White-Paper-on-IGS.pdf)

- Report 2011 on Cooperation Mechanisms between Insurance Guarantee Schemes

[https://eiopa.europa.eu/fileadmin/tx\\_dam/files/publications/reports/EIOPA%20Report%20on%20Cross%20Border%20Cooperation%20between%20IGS%20July%202011.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/EIOPA%20Report%20on%20Cross%20Border%20Cooperation%20between%20IGS%20July%202011.pdf)

- European Commission's web pages on Guarantee Schemes

[http://ec.europa.eu/internal\\_market/insurance/guarantee\\_en.htm](http://ec.europa.eu/internal_market/insurance/guarantee_en.htm)

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EUROPEAN INSURANCE  
AND OCCUPATIONAL PENSIONS AUTHORITY

## Thank you

For additional information please contact:  
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Regulations no. 1617 of 22 December 2006

## **Regulations relating to the guarantee scheme for non-life insurance**

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**Regulations relating to the guarantee scheme for non-life insurance**

**Legal authority:** Laid down by the Ministry of Finance on 22 December 2006 pursuant to the Act of 6 December 1996 no. 75 on Guarantee Schemes for Banks, Insurance companies' guarantee schemes and Public Administration, etc, of Financial Institutions Section 2A-1, second paragraph, second sentence, third paragraph and fourth paragraph, Section 2A-2 fourth paragraph, second sentence, Section 2A-3 third paragraph, Section 2A-4 first paragraph, second sentence, and second paragraph, Section 2A-5 second paragraph, Section 2A-6 second paragraph, and Section 2A-7, cf. decision on delegation 22 December 2006 no. 1609.

**Amendments:** Amended by the Regulations of 24 May 2007 no. 543, 18 Dec 2009 no. 1726.

**Chapter 1. The guarantee scheme's scope**

**Section 1-1. Insured risk that exists in Norway**

- (1) The guarantee scheme only covers claims that relate to an insured risk that exists in Norway.
- (2) An insured risk is deemed to exist in Norway in the case of
  - a) the insurance of real property or real property with contents that are covered by the same contract, when the property is located in Norway,
  - b) the insurance of means of transport, when the means of transport is registered in Norway,
  - c) insurance that covers risks associated with travel or holidays, if the insurance was taken out in Norway and the contract has a duration of a maximum of four months, or
  - d) insurance other than the insurance mentioned in litra a, b and c, when the insurance covers a policyholder or insured who is normally resident in Norway or, if the policyholder or insured is a legal person, when the entity to which the contract relates is in Norway.

**Section 1-2. Insured risk that is not covered by the guarantee scheme**

- (1) The guarantee scheme does not cover:
  - a) credit insurance,
  - b) life insurance as mentioned in the Act of 10 June 2005 no. 44 relating to insurance companies, pension companies and their activities, etc, Section 1-3, second paragraph, second sentence that non-life insurance companies can provide pursuant to a licence granted by Finanstilsynet,
  - c) energy insurance,
  - d) aviation insurance,
  - e) marine insurance, except when the insurance relates to ships exempt from the registration requirement, cf. the Norwegian Maritime code of 24 June 1994 no. 39, Section 11, second paragraph, or fishing vessels up to and including 50 gross tons that are registered in the

Register of Ships, cf. the Norwegian Maritime Code, Section 11, first paragraph, first sentence,

- f) business insurance, when the insurance relates to an entity that at the time the contract is concluded or upon later renewal fulfils at least two of the following conditions
    - has more than 250 employees,
    - has a turnover of at least NOK 100 million according to the latest annual report and accounts, or
    - has assets of at least NOK 50 million according to the latest balance sheet,
  - g) insurance claims that are reinsured in companies such as those mentioned in the Act of 10 June 2005 no. 44 relating to insurance companies, pension companies and their activities, etc, Section 15-8 (captive insurance company) when the insurance contract is concluded by one who belongs to the group for which the captive insurance company was established,
  - h) insurance claims from public bodies.
- (2) Nonetheless, the guarantee scheme does cover liability insurance taken out to fulfil orders issued by or pursuant to the law (compulsory liability insurance).
  - (3) The guarantee scheme shall not cover more than 90 per cent of each individual claim. Nonetheless, claims pursuant to insurance contracts that relate to housing and compulsory liability insurance shall be 100 per cent covered.
  - (4) The guarantee scheme shall not cover insurance claims in excess of NOK 20 million for each claim for each insured for each insurance instance, cf. Act of 16 June 1989 no. 69 relating to insurance contracts, Section 1-2 litra c, first sentence.
- 0 Amended by the Regulations of 18 Dec 2009 no. 1726 (in force from 21 Dec 2009).

### **Section 1-3. Application of the Freedom of Information Act and the Public Administration Act**

- (1) The Act of 19 June 1970 no. 69 relating to public access to documents in the public administration (Freedom of Information Act) applies to the guarantee scheme's activities.
- (2) The Act of 10 February 1967 relating to procedure in cases concerning the public administration (Public Administration Act), Chapter II, Section 13 to Section 13f, Section 18 to Section 21, and Section 35, applies to the guarantee scheme's activities. In relation to decisions concerning payments from the guarantee scheme, Section 23 to Section 25 and Section 27, as well as Chapter VI, apply to the extent they are appropriate.

## **Chapter 2. Membership of the guarantee scheme**

### **Section 2-1. Membership**

- (1) Insurance companies granted a licence to provide direct non-life insurance in Norway shall be members of the guarantee scheme. The same applies to life insurance companies with a licence to provide non-life insurance as mentioned in the Regulations of 18 September 1995 no. 797 relating to classification into insurance classes as a basis for awarding concessions, Section 2 class no. 1 and 2, cf. Section 7



- (2) Norwegian branches of insurance companies with their head office in another EEA state that provide direct non-life insurance in Norway shall be members of the guarantee scheme.
- (3) The following companies shall not be members of the guarantee scheme
  - a) companies such as those mentioned in the Act of 10 June 2005 no. 44 relating to insurance companies, pension companies and their activities, etc, Section 15-8 (captive insurance company),
  - b) mutual companies that are entitled to and annually carry out settlements in arrears with policyholders, and
  - c) companies that do not cover risks that fall under the guarantee scheme's coverage, cf. the Guarantee Schemes Act, Section 2A-1, and these Regulations, Section 1-1 and Section 1-2.
- (4) Companies such as those mentioned in subsection (3) shall nonetheless be members of the guarantee scheme if they cover liability insurance taken out to fulfil orders issued by or pursuant to the law (compulsory liability insurance).

**Section 2-2. *Exemptions for branches of insurance companies with their head office in another EEA state***

- (1) Norwegian branches of insurance companies with their head office in another EEA state that provide direct non-life insurance in Norway are exempt from the duty to be a member of the guarantee scheme if the insurance company is a member of a guarantee scheme for non-life insurance in its home state and the branch documents that the scheme covers, to about the same extent, insurance that falls under the Norwegian guarantee scheme.

### **Chapter 3. The members' duty of disclosure to policyholders**

**Section 3-1. *Duty of disclosure***

Finanstilsynet issues rules concerning the duty of disclosure for members of the guarantee scheme concerning which guarantee scheme applies to the entity and which guarantees regarding the insurance obligations the scheme provides.

0 Amended by the Regulations of 18 Dec 2009 no. 1726 (in force from 21 Dec 2009).

### **Chapter 4. Members' liability to the guarantee scheme**

**Section 4-1. *Basis for calculating the members' liability***

Deductions shall be made in the basis for calculating the members' liability to the guarantee scheme pursuant to the Guarantee Schemes Act, Section 2A-4, first paragraph, first sentence, for premium revenues from energy insurance, aviation insurance, marine insurance, except coastal hull insurance, and insured risks that do not exist in Norway, cf. these Regulations, Section 1-1 and Section 1-2, subsection (1) litra c to e.

#### **Section 4-2. *The members' provisions***

- (1) Each member shall in a separate liability item on their balance sheet set aside 1 per cent each year of the directly earned gross premiums covered by Section 4-1 until the sum of the allocated funds amounts to 1.5 per cent of the sum of such earned gross premium revenues in the last 3 years.
- (2) In subsequent years the amount of any shortfall shall be set aside, or the provisions possibly reduced, such that the total provisions always equal the volume mentioned in subsection (1).
- (3) In the event of a capital call pursuant to the Guarantee Schemes Act, Section 2A-5, Finanstilsynet shall issue rules concerning the restoration of the volume.
- (4) Returns on the allocated funds shall fall to the company.
- (5) Subsections (1) to (4) do not apply to branches of insurance companies with their head office in another EEA state, cf. Section 2-1, subsection (2).

0 Amended by the Regulations of 18 Dec 2009 no. 1726 (in force from 21 Dec 2009).

### **Chapter 5. Payments from the guarantee scheme**

#### **Section 5-1. *Basis for the guarantee scheme's decision to make a payment***

The guarantee scheme's board of directors may base its decision about a payment on the fact that the insurance claim has been tried and approved in an estate in administration pursuant to the rules in the Guarantee Schemes Act, Section 4-10, subsection (2), cf. the Bankruptcy Act Chapter VIII et seq. If the insurance claim is disputed by the insurance company or its estate in administration, the person advancing the claim can be told to bring an action against the insurance company or estate.

#### **Section 5-2. *Payment through an estate in administration***

The guarantee scheme's board of directors may enter into an agreement with an estate in administration that the estate shall make payments on behalf of the guarantee scheme. Payments from the guarantee scheme to an estate in administration for distribution to persons entitled to coverage are not included in the estate in administration's assets.

#### **Section 5-3. *The guarantee scheme's coverage of claims***

- (1) The guarantee scheme does not cover claims for interest. However, this does not apply to claims for interest associated with insurance for housing and liability insurance taken out to fulfil orders issued by or pursuant to the law (compulsory liability insurance), cf. these Regulations, Section 1-2, subsection (2).
- (2) The board of directors may fix instalments for payment. When payments are made from the guarantee scheme to cover insurance obligations, the board may decide to first cover up to NOK 5 million, including interest, of each claim for each insured for each insurance instance, cf. these Regulations, Section 1-2, subsection (4). If the board finds it necessary, it may decide to only cover part of a claim (reduction). When assessing whether or not a claim shall be

reduced and to what extent, account shall be taken of the person entitled to cover, type of insurance and other factors.

- (3) Decisions concerning payments from the guarantee scheme can be appealed to the Ministry of Finance.

## **Chapter 6. The guarantee scheme's board of directors and its work**

### **Section 6-1. *The board of directors' secretariat***

Finanstilsynet is the board of directors' secretariat for the guarantee scheme.  
0 Amended by the Regulations of 18 Dec 2009 no. 1726 (in force from 21 Dec 2009).

### **Section 6-2. *Finanstilsynet's authority to convene the board of directors***

Finanstilsynet can convene the board of directors when they deem this necessary.  
Finanstilsynet shall convene the board when there is reason to fear a member of the guarantee scheme will be unable to fulfil its obligations pursuant to the insurance contracts.  
0 Amended by the Regulations of 18 Dec 2009 no. 1726 (in force from 21 Dec 2009).

### **Section 6-3. *Authority to establish lines of credit and liquidity loans***

- (1) The board of directors can establish lines of credit in order to ensure the guarantee scheme's liquidity.
- (2) If the payments from members are insufficient to cover the guarantee scheme's liability, a liquidity loan can be taken out in order to be able to pay the consequences of that liability.

### **Section 6-4. *Duty to report***

The guarantee scheme shall produce an annual report and annual financial statements. These shall be subject to audits.

0 Amended by the Regulations of 24 May 2007 no. 543.

## **Chapter 7. Implementation of the branches' membership and coordination with other guarantee schemes and the home state's authorities**

### **Section 7-1. *Duty to report for branches of companies with their head office in another EEA state***

Norwegian branches of insurance companies with their head office in another EEA state that provide direct non-life insurance in Norway, cf. these Regulations, Section 2-1, subsection (2), shall report the Norwegian branch's gross earned premiums associated with direct non-life insurance covered by the guarantee scheme to Finanstilsynet each year.

0 Amended by the Regulations of 18 Dec 2009 no. 1726 (in force from 21 Dec 2009).

**Section 7-2. *Agreement between the insurance companies' guarantee scheme and the home state's guarantee scheme***

If a branch of a foreign insurance company is a member of a guarantee scheme in its home state, the Norwegian guarantee scheme shall seek to conclude an agreement with the home state's guarantee scheme, which shall include the following

- a) which claims are covered by the Norwegian guarantee scheme and the home state's guarantee scheme, respectively,
- b) the fact that the guarantee scheme is ensured the information from the home state's guarantee scheme necessary to be able to calculate the Norwegian guarantee scheme's coverage obligations in situations where such obligations are triggered,
- c) how the coverage of claims shall be apportioned between the guarantee schemes.

**Section 7-3. *Finanstilsynet's role in an administration or winding-up situation***

- (1) In an administration or winding-up situation, cf. the Guarantee Schemes Act, Section 4-5, Finanstilsynet shall ensure that the interests of policyholders in branches in Norway are protected.
- (2) In an administration or winding-up situation the branch in Norway may not issue new or renew insurance without Finanstilsynet's permission, cf. the Guarantee Schemes Act, Section 4-11, first paragraph.
- (3) Finanstilsynet shall consult the home state's supervisory authorities before Finanstilsynet approves payments to policyholders pursuant to the Guarantee Schemes Act, Section 4-6, first paragraph, *litra d*.

0 Amended by the Regulations of 18 Dec 2009 no. 1726 (in force from 21 Dec 2009).

**Chapter 8. Entry into force and transitional provisions Section**

**8-1. *Entry into force and transitional provisions***

- (1) The regulations enter into force on 1 January 2007. At the same time, the guarantee scheme for non-life insurance takes over all of the insurance companies' guarantee schemes' rights and obligations.
- (2) The provisions concerning the guarantee scheme's coverage and the guarantee scheme's payments apply to estates in administration in those cases where a decision to enter public administration was taken from and including 1 January 2007.