



The Association of Trinidad and Tobago Insurance Companies

The Finance Act, 2007

1.0 Introduction

Pursuant to our meetings with the Minister of Finance, the Honourable Karen Nunez-Tesheira and the Inspector of Financial Institutions, Mr. Carl Hiralal, a recommendation was made that the Association of Trinidad and Tobago Insurance Companies (ATTIC) present a paper to address its concerns regarding the provisions of the Finance Act, 2007, which addresses the ability to transfer the value of benefits from one annuity or pension plan to another.

This piece of legislation was enacted without consultation with the insurance industry, or we understand, our Regulator, the Central Bank of Trinidad and Tobago. This legislation has a retroactive effect on annuity and pension type products that are of a long term nature, and prescribes a formula to calculate the value of funds without taking into account the costs incurred by the company in providing the product.

A review of the Act evidences that it is deficient in that sub-section 14(C) is missing, therefore impeding the implementation of this section. Nonetheless, the Association wishes to address key concerns with this provision.

2.0 The Legal Framework

The Finance Act, 2007, assented to on July 10th, 2007, amends The Income Tax Act, Section 28, sub-section 14. This amendment reads as follows:

(14A) "A trustee, trust corporation or insurer which manages a pension fund plan or deferred annuity plan approved under this section, may, at the request of an employee or annuitant, transfer the value of the benefits accrued to the employee or annuitant under such plans to another approved pension fund plan or deferred annuity plan."

The amendment to The Act under sub-section 14 (B) also defines the value of benefits accrued to -

"(a) an employee who is a member of a pension fund plan approved under this section, shall not be less than the contributions of the employee, such contributions being deemed to include the payment of interest or a share of return on investments made in accordance with the pension fund plan;

(b) an annuitant under a deferred annuity plan approved under this section, shall not be less than the premiums of such annuitant, such premiums being deemed to include the payment of interest or a share of return on investment in accordance with the deferred annuity plan;

(c) the value of benefits accrued to an employee under a pension fund plan approved under this section may also include the contributions of the employee, such contributions being deemed to include the payment of interest or share of return on investment in accordance with the pension fund plan;

(d) the value of benefits transferred in accordance with subsection (14A) shall be deemed not to have been a payment of a benefit before retirement or maturity and shall not be liable to tax."

3.0 Financial Implications

ATTIC notes that the Act defines the value of benefits accrued shall be not less than the contributions/premiums made by the employee/annuitant including the payment of interest or share of return on investments. This definition challenges the contractual terms on existing policies **after the fact** and can have severe financial implications on Insurance companies.

It must be noted that the full value of the contributions/premiums does not go directly towards the fund as there are costs incurred in the managing of the Pension Fund/Deferred Annuity which must be deducted from these premiums. Some of these costs are front end costs and there are management costs which run for the duration of the policy.

By mandating the payment of benefits over and above the current value of the Pension Fund/Deferred Annuity and allowing withdrawals which were previously not allowed, this provision has the potential to threaten the solvency of the companies that write this type of business since an immediate effect would be increased reserves without increased assets to support these reserves. The assets held in the Statutory Fund will now be inadequate to meet these increased reserves. In addition, the existing policy contracts do not envisage an environment whereby pension/deferred annuity type products can be transferred from one entity to another, the Act as presently worded will likely cause a liquidity and profitability crisis within the Industry a situation that the Central bank of Trinidad & Tobago, the Ministry of Finance and all Financial Institutions would want to avoid.

The Act as presently worded will compromise the Statutory Fund, and have far reaching implications for how the Insurance Industry presently carries out its business. We believe that all policyholders will be put at risk and the Act will jeopardize the financial viability of Insurers.

4.0 Competitive Disadvantage

The National Financial Literacy programme identified the need for more insurance and retirement planning at the individual level. Annuity type products are typically sold not bought and education comprises part of any sale. Insurance companies provide this service by identifying prospective customers and informing them of the benefits of having these products thus incurring significant acquisition costs during the sales process. Insurers will be placed at a competitive disadvantage if the now educated policyholders can transfer their benefits - without an adjustment for expenses incurred in this education process - to other players who do not incur these levels of costs in the acquisition of their business. There would be little incentive for insurers to continue this type of sales practice if they are unable to recoup their costs.

Insurance Companies are already at a significant disadvantage to the Banks as they are subject to the limitations prescribed in the Insurance Act of 1980. Banks are not subject to any limitations and can invest the funds they receive in any way they see fit to maximize their investment, such as using them for high interest loans.

This provision also opens up the possibility of foreign Insurers registering in Trinidad and via advertising and other cost effective measures seeking to build a customer base by attracting the existing customers of the locally domiciled Insurers, at the expense of the local market.

5.0 International Framework

ATTIC has researched the issue of portability of pensions in the United Kingdom and Canada and our investigations indicate that both territories allow transfers of pension type and annuity products, one stipulation being that both parties must be in agreement with the transfer of funds.

6.0 Recommendations

- (a) ATTIC recommends that the portability of pensions should be handled similarly to our counterparts in the United Kingdom and Canada. In order for a transfer to occur, it should be mandatory that :-
- i) both companies agree to the transfer,
 - ii) the sum to be transferred should be equal to the cash value of the Fund at the time of the transfer request.
- This allows Insurance Companies the opportunity to recoup the costs incurred and would serve to drastically reduce the impact on the Insurance Industry.
- (b) ATTIC also recommends that the transfers should only be allowed between like registrants with similar products, for example, if a transfer request is received for a client's annuity, then the policyholder should only be permitted to transfer their monies into a registered annuity offered by another Insurance Company.
- (c) The number of transfers allowed should be limited to encourage policyholders to prudently analyse the benefits of a transfer on a long term basis.

7.0 Conclusions

ATTIC supports transfers between like registrants with similarly structured products.

Under the current wording of the legislation, companies do not have to, but may, transfer the value of funds to another registered product unless they are assured that the company's costs have been recouped. We are therefore recommending that in the interests of both parties, subsections 14 B(b) and 14 B(c) of the legislation be deleted and the amending legislation not prescribe the value of benefits to be transferred.

In closing, ATTIC must reiterate that this piece of legislation was enacted without consultation with the insurance industry. We trust that this was an oversight for this particular piece of legislation and that, in future, the views of the industry will be sought before any further legislation affecting the industry, proceeds to Parliament.