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Author(s): Jenny Willcocks (of Holding Redlich)
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Protecting members' insured benefits

As a consequence of the global financial crisis, some group insurers are in financial difficulties. Lawyer Jenny Willcocks considers what steps trustees can take to ensure members' insured benefits are protected.

Australia has a strong regulatory regime on solvency and capital adequacy of life insurance companies, but this does not operate as an absolute guarantee.

The Life Insurance Act 1995 gives policy owners priority over shareholders, but if a group insurer is wound up, policy owners rank as ordinary unsecured creditors.

Trustees should consider the following actions if their group insurer is under financial pressure.

Monitor the situation

Trustees should obtain a briefing on the group insurer's situation. Where appropriate, a process allowing the trustee to monitor the situation should be put in place. All meetings and discussions should be recorded and any verbal or written assurances from the insurer should be documented.

Are the terms of your group insurance policies adequate?

The global financial crisis is an extraordinary event and may not be addressed in the group insurance policies. Consider the following:

- Can you terminate the policy at any time on giving reasonable notice?
- If the group insurer becomes insolvent or there is a threat that it might, can you immediately terminate and appoint an alternative group insurer?
- How do you pay premiums? If you pay 12 months in advance, there is potential for you to lose 12 months of premiums as well as cover.
- Can you vary the policy to address this situation, for example, to pay premiums monthly instead of yearly?

Trust deed

Does your trust deed allow you to reduce benefits if the insurer refuses or is unable to pay? If not, there is potential for members to look to the trustee for payment of the insured benefit.

Develop a plan B

Transitioning from one insurer to another requires planning. Trustees must be confident they are not going from the frying pan into the fire. A careful due diligence of the alternative insurance company is needed.

When changing insurers, avoid gaps in cover. This requires negotiation with the existing insurer and the alternative insurer.

Disclosure

Word communications carefully and stick to the facts. Do not embellish as this could inadvertently mislead members.

Member communications, including product disclosure statements, will require careful scrutiny. The financial crisis is not something that would have been considered previously.

At what point do you seek alternative insurance arrangements?

This is the most difficult question of all and there is no simple answer. It will be up to the trustee to form a view on whether the situation puts members' benefits at risk.