<한국 생보사들의 잉여금 배당 및 관련 이슈: Surplus Allocations and Related Issues for Certain Life Insurance Companies*>

***외환위기이후 월드뱅크 구조조정 지원자금으로 수행된 용역보고서**

Mark Fowler FSA, FCIA(2000)

□ 본 보고서는 한국 생보사(본 보고서는 삼성생명 건을 다루고 있음)에 있어 유배당계약자 잉여금과 관련된 이슈, 특히 유배당계약계정의 현황, 내부유보액, 그리고 이러한 항목들의 처리방안들에 대하여 논의

□ **관련 현황 및 진단:**

- ○ 삼성생명이 수십년간 추가 증자가 전혀 없이 이처럼 대형사로 성장할 수 있었던 것은 유배당계약자에 대한 적절한 배당을 하지 않는 것을 통해 내부적으로 재무상태를 유지해 왔던 것에 기인하는 것으로 판단됨.
- ○ **[배당의 불충분성을 강조한 의미]:** <u>최근까지도 유배당계약이익의 30%가 주주몫으로 돌아갔었는데 이러한 비율은 국제적 기준 등과 비교해 볼때 너무 과도한 것으로 판단됨(대부분의 주요 국가들은 10% 이하이고 삼성생명과 비슷한 규모의 대형 생보사들은 10%보다 훨씬 낮은 비율을 주주에게 할당).</u>
- ○ 대부분의 주요국에서는 주주(주식회사)가 유배당상품을 취급하는 것이 허용되는 경우, 생보사의 경영이 신중하고 투명하게 운영되어야 한다는 점과 무엇보다도 유배당계약자가 적절한 배당을 받도록 해야 한다는 명백한 약속 및 신념이 전제되고 있고, 이를 어기는 것은 법규정을 위반하는 근거가 됨.
- ○ 이와 관련, 경영진이 배당제도를 무배당계정 부문의 자본충당 등에 도움이 되도록 악용하는 행위 등을 막기 위함이 유·무배당계정간 구분계리를 시행해야 하는 주요 이유 중의 하나임.
- ○ **[계약자보호 제도의 미비]:** <u>한편, 현재 생보사 이사회에 유배당계약자를 대표하는 이사가 없는 상태이고, 이럴 경우 감독당국만이 유일하게 유배당계약자의 이익을 보호해줄 수 있는 창구임.</u>

□ **의견 및 권고사항:**

○ 유배당계약, 무배당계약 및 주주몫의 자금을 정확히 계산하기 위해 감독당국은 1991년 이후 삼성생명의 전체 회계를 다시 재정립 및 계산할 것을 권고함.

○ **[부채계정으로의 회계재분류 절대 불가]:** 계약자 몫의 내부유보액은 자본으로의 전입 및 주식배당과 관련된 합리적 처리방안이 마련되기 전까지는 자본잉여금 항목에 계속 유지시키도록 권고함.

○ **[주식으로 상장차익배분]:** 삼성생명의 반대에도 불구하고 감독당국은 내부유보액의 자본전입과 동시에 주식배분이 더욱 타당한 해결방안임을 천명할 것을 권고함(I suggest that FSS take the position that a share conversion of the policyholder 'capital surplus' is the preferred resolution, despite the company's objection.)

○ 가능한 빠른 시일내에 감독당국은 유배당상품 취급과 관련된 명확한 회계기준(특히 이익배당과 관련된)을 정립할 것을 권고함.

○ 특히 감독당국은, 삼성생명 자산규모 정도의 회사에 적용될 국제 기준상의 샘플 생보사들을 정한후 유배당계약이익의 정확한 배분비율을 조사·확인하고, 삼성생명도 향후 배분비율을 정함에 있어 이러한 결과를 적용하게 해야 할 것임(만약 주주몫의 비율로 샘플의 Median이 10% 이하로 나오면, 삼성생명도 이처럼 감소된 비율을 적용해야 할 것임).

○ 삼성생명 규모(약 유배당계약자산 510억불, 캐나다달러)의 대형 생보사의 경우 유배당계약이익의 2.65% 정도만이 주주몫으로 할당되었어야 함
(I estimate that a company of Samsung's size, with an estimated participating fund of some $51billion CAD, would be entitled to transfer approximately 2.65% of the dividends actually distributed to participating policyholders in the year.)

○ 감독당국은 현행 국내 생보사의 회계기준 및 규정이 국제적 기준에 맞는지 전체적으로 재점검해야 하고, 특히 유배당계약자 몫의 이익이 주주에게 (부적절하게) 전이되는 것을 제한하는 규정이 현재 국제적 기준에 부합하도록 고쳐져야 함.

○ **[계약자보호관련 지배구조개선]:** 감독당국이 생보사로 하여금 의무적으로 유배당계약자대표(독립적인)들을 회사의 이사회 멤버로 선임하도록 하는 방안을 강구하도록 권고함.

<저자, Mark Fowler, FSA, FCIA 약력>

- 보험계리사(캐나다 보험계리인협회)
- 캐나다 정부의 생명보험 및 연금기금 감독을 담당하는 책임자
- 1987~1996: 캐나다 정부의 연금감독 책임자
- Lawrie Savage & Associates과 생명보험 및 연금개혁과 관련된 다수의 컨설팅 업무 수행

Mark Fowler FSA, FCIA
Mark is a professional actuary who, prior to entering the consulting field, has held senior positions with the government of Canada in respect of the supervision of life insurers and pension funds. As Director General of the Pension Benefits Division of OSFI from 1987 to 1996 he was head of pension supervision for the Canadian government. He has also held senior positions with the federal government in the supervision of the life insurance industry in Canada. He has been consulting since 1996. In the international field Mark is interested in the development of public policy and modernization of supervisory techniques in the pension and life insurance fields. He has carried out a number of assignments with Lawrie Savage & Associates in the field of life insurance and pension reform. Mark is a Fellow of the Society of Actuaries and a Fellow of the Canadian Institute of Actuaries.

CONFIDENTIAL

REPORT

Financial Supervisory Service
REPUBLIC OF KOREA

Surplus Allocations and Related Issues for Certain Life Insurance Companies

August 31, 2000

Purpose:

This is my report on the issue of treatment of participating policyholder surplus in the accounts of certain life insurance companies in the Republic of Korea. In particular, it deals with the following in respect of the Samsung Life Insurance Company:

- the status of the participating policyholders' account,
- a specific amount held in the capital account that relates to a participating policyholder surplus allocation, and
- regulatory options for dealing with the current situation.

It is noted that a similar set of circumstances is involved in the case of the Kyobo Life Insurance Company. However, this report deals specifically with the Samsung Life. It is believed that the analyses and recommendations of this report should also apply to the case of the Kyobo Life.

Background:

This report is based on information provided by FSS staff. I have relied on its accuracy and on the interpretations obtained during discussions with staff and other local experts who have been involved in examining these issues.

Briefly, the company initiated an unsuccessful attempt to make a public offering of its shares in 1990. Up to that time it had been a share company that had issued only participating life insurance. The shareholders had never increased the paid capital of the company – beyond their initial investment - during their ownership history. As part of general public offering requirements, the company's real estate was re-valued and the increase in book value was recorded in the accounts. Essentially the increase was allocated 30% to shareholders and 70% to participating policyholders with the latter amount sub-allocated resulting in 30% of the increase being treated as participating policyholders' 'capital surplus amount'. (Actually a similar treatment of an earlier re-valuation created this particular account in April 1983.)

Favourable tax treatment of the gain has been extended for many years in succession following the government's action to suspend the public share offering in late 1990.

The amount of participating policyholders' 'capital surplus' is now approximately equal to the amount of shareholders' capital paid (actually they stand in the ratio .939 to 1).

There does not appear to be any evidence to support the appropriateness of this allocation ratio.

The company never established segregated fund accounting for participating policyholders and shareholders.

The company, along with others in the industry, began selling non-participating business in August 1992. No segregated fund accounting was established then or subsequently.

The company has grown very significantly and is now the dominant life insurer in Korea.

The participating business appears to have been unprofitable between 1957 and 1983 and few policyholder dividends were paid during that time. Since then dividends have averaged 70% of participating business statutory earnings.

Currently, shareholders are allocated 10% of the earnings from participating business (not of actual dividends paid to policyholders) but this was only very recently reduced from 30%.

Insurance expert advisors have recommended that the policyholders' capital surplus amount be converted to shares and distributed as such (not as cash) to participating policyholders as a pre-condition to any public offering of shares of the company. The controlling shareholder has objected, citing legal grounds.

A major international consulting firm has offered the opinion that the policyholders' capital surplus amount should be treated as a newly recognized debt or creditor interest, rather than an ownership interest.

Observations:

It is unfortunate that separate fund accounting has never been practiced or introduced in 1983 or 1990. This would have helped examine the fairness of the allocation rules that now appear arbitrary in retrospect. The fact that this rather obvious accounting practice was not initiated in 1992 when non-participating business began to assume importance suggests a lack of concern over the fair treatment of participating policyholders.

It is remarkable that the company could grow to its present size without any capital injections by the controlling shareholder over the years. The issue of new life insurance business can make severe demands on capital. It appears likely – but there is no scientific evidence on hand to support this assertion – that the growth of the business has been internally financed through non-payment of policyholder dividends. The fact that the historical lapse rates have been very high – up to 50%p.a <u>in aggregate</u>, only very recently reduced to 20% - suggests that most policyholders had little in the way of dividend expectations.

Given that the life insurance industry has had considerable periods of insolvency and appears to have been only marginally solvent for much of the pre-1990 period it appears that the value of the company at that time was contained in future earnings in respect of existing and new business. Since the shareholders appear to have been permitted to take 30% of participating business earnings until recently, this may explain the 1990 allocation of the real estate write-up.

The allocation of 30% of participating earnings to shareholders appears very unusual by international standards. Most jurisdictions limit the allocation to a maximum of 10%, and the effective allocation rate for a company of Samsung's size in many of them is much less. (It would be a regulatory achievement to reverse the excessive historical allocation in Samsung's case irrespective of other considerations, assuming this could be accomplished within the existing constitutional framework in Korea. However, this would not address the problem of making some sort of equitable distribution to past contributors of those earnings, most being no doubt unlocatable.)

In most jurisdictions where companies with shareholders are awarded the privilege of selling participating business, there is a clear understanding that the business will be managed prudently and that policyholders will have dividend or bonus expectations communicated to them at the point of sale. Thereafter, management has a burden to ensure that the business is prudently managed so as to deliver those expectations. The nature of participating business is such as to virtually guarantee those expectations and for management not to do so is grounds for some regulatory intervention. The risk that management will abuse the dividend mechanism to support the new business capital requirements of non-participating business is one reason why the segmentation of accounts is mandatory. It ensures transparency and constrains imprudent management. The lack of transparency should be of great regulatory concern to the FSS.

It appears that there is no provision for participating policyholder representation on the Board of the company. Given this, it appears that the FSS is the only current source of protection for their interests. As a result, FSS has a duty to be visibly engaged in such an effort, despite shareholder pressure to the contrary. The recent reduction in the proportion of participating policyholder earnings allocated to shareholders is an example of the sort of action needed in this case.

Recommendations:

I recommend that FSS attempt to re-construct the accounts of the company post-1991 to estimate the amount of participating, non-participating and shareholder funds as of the current date. The company will have to assist since their expense analyses will be needed to allocate certain overhead expenses and other items. This will produce a split of the insurance and shareholder funds that should be carried forward as part of statutory accounting. It will also assist in assessing the appropriateness of any future asset re-valuations for public offering, allocations of unrealized gains or losses on investments, investment valuation reserves or other purposes. There is some urgency in taking this measure as I believe that the company may well be deliberately accelerating its sales of non-participating products in order to enhance the shareholders' allocation of any asset re-valuations that are anticipated in the near future.

The amount of policyholder 'capital surplus' should continue to be carried in the shareholder fund pending resolution of the question of its convertibility to share capital.

I recommend that FSS ascertain the precise proportional allocation of participating policyholders' earnings to shareholders in a sample of international jurisdictions that would apply to a company of the size of Samsung Life. If, as I suspect, the median of the sample is less than 10%, I recommend the company be put on notice that a reduced level will apply in future years.
For example, I estimate that a company of Samsung's size, with an estimated participating fund of some $51 billion CAD, would be entitled to transfer approximately **2.65%** of the **dividends actually distributed to participating policyholders** in the year. This is considerably less than the level of transfer currently enjoyed by the Samsung shareholders, especially in light of the fact that they can apply a very significantly greater % to a larger base.

As respects the particularly difficult matter of the prior asset re-valuations, I suggest that FSS take the position that a share conversion of the policyholder 'capital surplus' is the preferred resolution, despite the company's objection. The possibility of converting the amount in question to non-voting common shares has been raised in my discussions with your advisors and may well warrant further analysis. However, it seems likely that the controlling shareholder would voice continuing objection on legal grounds. As it is beyond my professional competence to opine on the feasibility of this proposal, I must recommend that you obtain appropriate legal advice from the acknowledged Korean experts in such affairs. However, I do find it a most interesting concept.

FSS could explore the constitutionality of actually expropriating the company. This is obviously an extreme measure, but it could be useful to have its legal feasibility confirmed or denied. If it is confirmed, it might be either used as a negotiating lever with the controlling shareholder or, even more dramatically, successfully packaged as a part of general corporate reform – i.e. as an interim re-structuring measure with the ultimate goal of a subsequent public offering on terms satisfactory to FSS. It would have to be managed in such a way as to be seen by the international community as an appropriate object lesson to the financial sector. Unfortunately, it must also be acknowledged that such an extreme measure would likely be considered a precedent, with the result that other non-compliant companies would have to be similarly treated. There are other potential serious ramifications that would have to be assessed.

Other measures that can be considered are:

Introducing allocation rules, together with instituting fund accounting as mentioned above, which would limit allocations of participating business earnings to shareholders to 1/.939 or 106% of the amount of non-participating business earnings that are allocated to participating business earnings, assuming, of course, both are positive. In this way, the 'ownership interest' of the participating business is implicitly recognized. If the shareholders want to access their share of the participating business earnings they will have to first allocate the required share of the earnings of the non-participating business to the participating policyholders. This approach has other complications that would have to be considered but it does suggest that there should be severely limited opportunities in future for the shareholders to receive transfers from the participating funds. In addition to being complicated, and without precedent as far as I am aware, the shareholders would strenuously object since it is undoubtedly their view that the presence of "policyholder capital surplus" in the capital account does not have the status of risk capital at all. As a result they would argue the participating policyholders have no right to any non-participating earnings.

Introduce allocation rules, as above, and establish a current fair value of the participating policyholders' 'capital surplus' and transfer it to the participating fund for distribution to participating policyholders. To do so would require reviewing the allocations of asset re-valuations for fairness and accrual of earnings on the amount to reflect the growth in value of the company since 1990 in excess of amounts of investment income that have already been credited to participating policyholders' equity. Such a revision to the accounts might reduce existing retained earnings to the point that the shareholders may have to inject capital in order to meet the current solvency standard. Thus I expect this approach to be objectionable to the controlling shareholder. Also, any attempts to revise financial statements that had been duly prepared in accordance with the government's rules of the times would almost certainly be met with a major legal challenge. In my view, such a challenge would almost certainly succeed.

FSS should research the possibility of requiring the company to appoint <u>independent</u> participating policyholders' directors. They could have the duty of approving the allocation rules for fund accounting and the dividend scales proposed by management. FSS could either approve the shareholders' nominees or appoint them directly. They would also be able to monitor management's plans for the participating business, especially planned volumes of new business relative to earnings for dividend distribution.

In any case –

I recommend that FSS examine the provision on the current balance sheet for asset defaults in regard to the considerable portfolio of "unsecured loans". If that provision is found to be significantly inadequate – not terribly improbable under current conditions – the company's existing retained earnings will vanish.

FSS should institute fund accounting, as soon as possible, together with a requirement that the company establish viable dividend scales for participating business that will distribute an appropriate proportion of estimated emerging earnings on a regular basis.

This will permit the proper management of the participating fund in terms of its capacity to support new participating business. The fund accounting requirement will produce fairer allocations to participating policyholders and will necessitate the disclosure of allocation rules and promote transparency and improved regulation and supervision.

The rules limiting transfers of participating policyholders' earnings to shareholders should be updated to reflect current international standards. The Canadian rule indicates the standard in Korea permits transfers from participating funds that are extremely large. The transfers that would result from the application of the rules of other jurisdictions to Samsung should also be checked. If that exercise confirms this view, the rule for transfers in Korea should be strengthened, in favour of retaining more earnings in the participating fund for dividend distribution. Also, the base for computing the maximum transfer should be the amount of dividends actually distributed to participating policyholders, not the earnings of the participating fund.

FSS should completely review the life insurance statutory reporting requirements in order to ensure that they are consistent with those of other jurisdictions who have modernized their systems. Of particular concern is the matter of recognition of unrealized asset gains and the marking to market approach for solvency monitoring purposes. The current structure seems to carry the market value approach directly to the going-concern balance sheet, without smoothing. This would seem to expose retained earnings to wide fluctuations creating potential confusion for policyholders and, possibly, shareholders. The fact that Korean markets are volatile does justify caution in regard to allowing smoothing in going-concern financial statements. Nevertheless, I recommend that the current practice be reviewed.

I am also of the opinion that the current reporting should be augmented, since I believe that much basic data needed for analysis purposes is not being routinely reported to the FSS. I have left a summary of background material with your colleagues. It provides further comment in that regard.

Respectfully submitted,

Mark S Fowler F.S.A., F.C.I.A.