

# **Insurance (Industry Compensation Fund) (Amendment) Regulations 2018**

## **Regulations made by the Minister under sections 88 and 92 of the Insurance Act**

### **1. Short title**

These regulations may be cited as the Insurance (Industry Compensation Fund) (Amendment) Regulations 2018.

### **2. Interpretation**

In these regulations —

“principal regulations” means the Insurance (Industry Compensation Fund) Regulations 2015.

### **3. Regulation 3 amended**

Regulation 3(2) of the principal regulations is amended by inserting, after the words “including the hit and run sub-fund”, the words “and the insolvency sub-funds”.

### **4. New Part IV A inserted in principal regulations**

The principal regulations is amended by inserting, after Part IV, the following new Part —

## **PART IV A – INSOLVENCY SUB-FUNDS**

### **10A. Interpretation**

For the purposes of this Part —

“amount of an eligible claim” is the amount that would have been paid by the insurer had it continued to operate normally before the events that gave rise to the declaration under Regulation 13A was made but remains outstanding and unpaid;

“capital claims” means all claims that are not income claims;

“defined beneficiary” means, subject to section 89(2) of the Act, a beneficiary of a claim arising under a Mauritian policy who was a Mauritian resident at the time that the claim event under the policy occurred;

“defined policyholder” means, subject to section 89(2) of the Act, a policyholder of a Mauritian policy who was a Mauritian resident at the time the policy was issued;

“eligible claim” means a claim made as a result of an insured event that occurred before the defined event that gave rise to the determination made under Regulation 13A with respect to the relevant insurer;

“income claims” are claims that are contractually bound to be paid in regular instalments or are, because of their nature, providing or were intended to provide a regular payment by way of an indemnity for a regularly occurring expense;

“inwards reinsurance business” means reinsurance business accepted;

“lenders mortgage insurance” means a policy that covers a lender against the default of the contractual terms of a mortgage and the policyholder and beneficiary is the lender;

“resident” has the same meaning as in the Income Tax Act or means a person deemed to be resident as determined by the Managing Committee.

#### **11A. Application of this Part**

- (1) This part shall apply to all insurers except professional reinsurers and those insurers conducting –
  - (a) external insurance business;
  - (b) inwards reinsurance business;
  - (c) lenders mortgage insurance;
  - (d) insurance business that is excluded from the application of the Act by virtue of section 5 of the Act; or
  - (e) any combination of the above.
- (2) Notwithstanding paragraph (1), insurers excluded from the application of this part shall clearly disclose to policyholders that the policy they are entering into is not subject to the protection provided by the Compensation Fund.
- (3) Subject to paragraph (4), an insurer to which this part applies may issue insurance contracts that are not subject to, or protected by, the Compensation Fund, where there is reasonable grounds.
- (4) An insurer that is subject to this part shall ensure that clear disclosure is made to policyholders regarding the fact that their particular policy is not subject to the protection provided by the Compensation Fund

- (5) An insurer shall at all times have an exit plan and shall notify the Commission any material change which may have occurred in the information or documents submitted to the Commission
- (6) managing committee may prescribe the form, content, modalities and timing requirements of acceptable disclosures.

#### **12A. Organisation of insolvency sub-funds**

- (1) Subject to such limitations and restrictions as may be provided for under the Act and these regulations, there shall be organised into at least two separate insolvency sub-funds for long term and general insurance business.
- (2) The insolvency sub-funds shall be for the payment of any claims against an insurer, in respect of risks situated in Mauritius, remaining unpaid by reason of insolvency of such insurer.
- (3) Notwithstanding paragraph (4), the managing committee shall determine the sub-fund that shall apply to each insurer reflecting the category of insurance business for which they were licensed to carry on.
- (4) Where an insurer was authorised by the Commission to carry on both long term and general insurance business, the managing committee shall determine the sub-fund applicable to that insurer based on the principal insurance business for which it was licensed to carry on and where so determined the insurer shall be deemed to form part and be subject to the requirements pertaining to that sub-fund.
- (5) The Commission shall, after the determination is made by the managing committee, inform each insurer of the insolvency sub-fund that applies to them.

#### **13A. Activation of the Compensation Fund**

- (1) The managing committee shall make a determination to activate the relevant insolvency sub-fund where an insurer –
  - (a) has been subject to an action that gives rise to uncertainty regarding its ability to continue to make any claim payments in an orderly fashion;
  - (b) where an insurer is subject to a petition to the Court for its winding up under section 68 of the Act.
- (2) The managing committee shall give public notice of its determination under paragraph (1) and shall provide information to the public in Mauritius regarding –
  - (a) the operation of the Compensation Fund;
  - (b) eligibility to be considered as a defined policyholder or beneficiary; and

- (c) how to make a claim.

**14A. Technical sub-committee**

- (1) Subject to paragraph (2), immediately after making a determination under Regulation 13A, the managing committee shall establish a technical sub-committee made up of one representative of each insurer forming part of the same sub-fund that applies to the insurer that had a determination made with respect to it.
- (2) The insurer that is the subject of the determination shall not be represented on the technical sub-committee.
- (3) Without prejudice to paragraph (1), a member of a technical sub-committee may be represented by an alternate member representing the same insurer.
- (4) A separate technical sub-committee shall be established for each insurer that is subject to a determination under Regulation 13A.
- (5) The managing committee shall consult the technical sub-committee on matters regarding determinations to be made or actions to be taken in terms of the fund acting as a creditor with respect to the relevant insurer.
- (6) Members of the technical subcommittee shall not be remunerated by the Compensation Fund with respect to their membership of the technical sub-committee.

**15A. Defined policyholders and beneficiaries**

- (1) Subject to the other provisions of this Regulation, only defined policyholders and beneficiaries are eligible to receive compensation with respect to eligible claims from the Compensation Fund.
- (2) Where a policy is guaranteed by the insurer to be renewable at the option of the policyholder, whether subject to premium payment or otherwise, the policyholder would be considered to be a defined policyholder throughout the life of the policy.
- (3) Where a policy is renewed at the option of the insurer, the policy is considered to be reissued at the renewal date provided that the renewal date is at least 12 months after the previous issue date of a similar contract.
- (4) A policyholder, who was not a resident of Mauritius at the time the policy was issued, may become a defined policyholder only when they subsequently become a resident of Mauritius.
- (5) Where a policyholder ceases to be a resident of Mauritius during the life of the policy, the policyholder shall be advised by its insurer that the policy is no longer subject to protection under the Compensation Fund.

- (6) Notwithstanding paragraph (1) to (5), a Mauritian policy shall always be subject to the operation of the Compensation Fund as it can give rise to defined beneficiaries even if the policyholder is not a defined policyholder due to the need for the policyholder to be resident.
- (7) The policies referred to in paragraph (6) shall be included in any calculation of contribution to the Compensation Fund.
- (8) The managing committee may make a determination to include a person or group of persons as defined policyholders or beneficiaries if they consider that confidence in the insurance industry or in the performance of the Compensation Fund would be eroded if they fail to do so.

#### **16A. Eligibility to make a claim**

- (1) Where a defined policyholder or a defined beneficiary has a claim or an entitlement to a claim or any other benefit under a Mauritian policy that was issued by an insurer that is the subject of a determination under Regulation 13A, the defined policyholder or beneficiary may make a claim to the compensation fund.
- (2) Subject to paragraph (6), for a claim to be considered an eligible claim, it must be separately made with the insurer.
- (3) A claim that is made against an insurer directly as a result of the actions or inaction of an insurance broker or an insurance agent shall not be considered an eligible claim.
- (4) The insurer and the Managing Committee shall determine the amount of an eligible claim based on the terms and conditions of the insurance contract, claims assessment and normal procedures and practices.
- (5) The managing committee may determine that claims are only eligible if they are subject to an application to the Compensation Fund before a certain date, provided that the application for compensation is made in writing within 2 years from the date as determined under Regulations 13A.
- (6) A claim relating to the surrender or maturity of a long term insurance policy may be made by the Compensation Fund on behalf of the policyholder or beneficiary.
- (7) When making a claim, defined policyholders and beneficiaries shall cede the rights that they have under the claim against the relevant insurer to the Compensation Fund such that it shall have the rights and entitlements to act in their stead.
- (8) In pursuit of the claim against the insurer, the defined policyholder or beneficiary shall continue to provide such information as may be required by the Compensation Fund to complete the assessment of their claim.

- (9) The rights that are ceded to the Compensation Fund under paragraph (7) include the right to be represented, vote, and act in any other way as a creditor in any wind-up, administration, custodianship or liquidation and to receive any funds disbursed from the insurer or any other source by way of entitlement under the claims under the policy or policies.
- (10) Any funds received under paragraph (9) shall be paid into the relevant sub-fund.

#### **17A. Continuity of cover**

The managing committee may determine that a group of defined policyholders and beneficiaries shall be eligible to have their claims included under the Compensation Fund even though the claim event occurred after the defined event that gave rise to the determination under Regulation 13A provided that –

- (a) the claims relate to a class of insurance where the insurer held a material market share in Mauritius, at least to the extent that the managing committee believes is or could reasonably be expected to be in excess of twenty percent of all such insurances of that class in the Mauritian insurance market;
- (b) the managing committee believes that practical challenges exist that make it difficult for a majority of customers to secure replacement cover with other insurers within the extended period and that the failure to secure replacement cover may cause concern to policyholders that could have economic implications or cause undue distress; and
- (c) the extended period is not more than three months after the date the determination is made.

#### **18A. Payments to defined policyholders and defined beneficiaries for eligible claims**

- (1) In accordance with subsection 89(2) of the Act, no payment shall be made from the insolvency sub-funds to –
  - (a) a substantial shareholder of the insolvent insurer;
  - (b) any person whose policy benefits are in excess of the normal benefits relating to the class of insurance policy to such extent or in such circumstances as may be prescribed.
- (2) For each defined policyholder and defined beneficiary, the eligible claim shall be identified as being either a capital claim or an income claim.
- (3) Subject to paragraph (3), the Compensation Fund shall make a payment of 80 percent of the amount of each eligible claim.
- (4) The aggregate maximum of all eligible claims to be paid to a defined policyholder or defined beneficiary, with respect to each insurer subject to a determination under Regulation 13A, shall not exceed –

- (a) with respect to all income claims, XXXXXX rupees per month; and
- (b) with respect to all capital claims, YYYYYYY rupees in total.

- (4) Payments shall be deducted from the relevant sub-funds.
- (5) For the avoidance of doubt, no fund or other property belonging to the Commission shall be available for the payment of any claim under this Part.

**19A. Contribution to insolvency sub-fund**

- (1) All contributions made to the Compensation Fund and all claims and expenses made against it shall be added to or deducted from, as the case may be, the sub-fund that the insurer has been determined to apply to it.
- (2) In order for payments to be made in a timely manner, the managing committee may secure financing commitments and enter into contractual arrangements as may be necessary.
- (3) Payments received from financing commitments shall be credited to the relevant sub-fund.
- (4) As soon as a sub-fund starts making payments, the managing committee shall make regular assessments of the financial commitments against the expectations for recoveries from the insurer.
- (5) The assessments referred to in paragraph (4) shall be made as frequently as may be deemed necessary given the availability of information to conduct such assessments but in any case at least annually.
- (6) Where the managing committee is of the opinion that the sub-fund will be unable to repay the financing through the expected recoveries of the insurer, the Compensation Fund shall establish a levy on all insurers to which the sub-fund applies except the insurer that has had the relevant determination made under Regulation 13A.
- (7) Any levy shall be expressed as a percentage of gross premium income from policies that are, according to the records of each insurer, not excluded from participation in the Compensation Fund.
- (8) For the assessments referred to in paragraph (7), the managing committee may make rules to facilitate the practical determination of policies to be included in the calculation to ensure that administrative costs on insurers are fair.
- (9) The aggregate percentage of gross premium required under the levy shall not exceed 3 percent.
- (10) The levy shall continue to be assessed and payable until such time and at such rate as the managing committee considers necessary to enable the financing to be repaid.

## **20A. Positive sub-fund balance**

Where a sub-fund has a positive balance after compensation has been paid, the remaining amount shall be allocated and disbursed –

- (a) to each insurer that contributed to the sub-fund in proportion to the amount contributed, up to but not exceeding the amount contributed; and
- (b) thereafter, to each defined policyholder and defined beneficiary in proportion to the amounts of eligible claims remaining unpaid after applying the reductions provided in Regulation 18A(3).

**5.** These regulations shall come into operation on XXX 2018.

Made by the Minister on XXX 2018.